

**EXHIBIT A**  
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UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

PATRICK CALHOUN, ET AL., ON CV-20-5146-LHK/SVK  
BEHALF OF THEMSELVES AND ALL CV-20-3664-LHK/SVK  
OTHERS SIMILARLY SITUATED, CV-21-2155-LHK/SVK

PLAINTIFFS, SAN JOSE, CALIFORNIA  
VS.

GOOGLE INC., JUNE 2, 2021  
DEFENDANT. PAGES 1 - 79

**SEALED**  
AND RELATED CASES.

TRANSCRIPT OF ZOOM PROCEEDINGS  
BEFORE THE HONORABLE SUSAN VAN KEULEN  
UNITED STATES DISTRICT JUDGE

A-P-P-E-A-R-A-N-C-E-S

FOR THE PLAINTIFFS: BOIES, SCHILLER & FLEXNER LLP  
BY: JAMES W. LEE  
HSIAO C. MAO  
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(APPEARANCES CONTINUED ON THE NEXT PAGE.)

OFFICIAL COURT REPORTER: IRENE L. RODRIGUEZ, CSR, RMR, CRR  
CERTIFICATE NUMBER 8074

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY,  
TRANSCRIPT PRODUCED WITH COMPUTER.

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A P P E A R A N C E S: (CONT'D)

FOR THE PLAINTIFFS:

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(APPEARANCES CONTINUED ON THE NEXT PAGE.)

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A P P E A R A N C E S: (CONT'D)

FOR THE DEFENDANT:

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SAN JOSE, CALIFORNIA

JUNE 2, 2021

P R O C E E D I N G S

(COURT CONVENED AT 1:35 P.M.)

THE COURT: GOOD AFTERNOON. WELCOME TO OUR GOOGLE  
DISCOVERY HEARING IN THE CALHOUN, BROWN, AND HEWITT MATTERS.  
THANK YOU ALL FOR GETTING HERE, AND WE'LL GET PROMPTLY  
UNDERWAY.

WHAT I WANT TO DO, AND I'LL HAVE MS. FANTHORPE CALL BOTH  
CALHOUN AND BROWN AND I'LL GET EVERYONE'S APPEARANCES, BUT LET  
ME JUST TELL YOU -- I'LL TELL YOU WHAT, WE'LL DO THAT AND THEN  
I'LL LAY OUT HOW WE'RE GOING TO PROCEED TODAY.

THE CLERK: SOUNDS GOOD. CALLING CASE 20-CV-03664,  
BROWN, ET AL., VERSUS GOOGLE LLC ET AL.

COUNSEL, PLEASE IDENTIFY YOURSELVES FOR THE RECORD  
BEGINNING WITH THE PLAINTIFF.

MR. LEE: GOOD AFTERNOON.

THIS IS JAMES LEE FROM BOIES, SCHILLER & FLEXNER  
REPRESENTING THE PLAINTIFFS.

I'M GOING TO LET MY COLLEAGUES WHO ALSO REPRESENT THE  
PLAINTIFFS INTRODUCE THEMSELVES.

MR. MAO: GOOD AFTERNOON AND EVERYONE IN THE COURT.

THIS IS MARK MAO BOIES, SCHILLER & FLEXNER REPRESENTING  
THE PLAINTIFFS.

MR. RICHARDSON: GOOD AFTERNOON.

BEKO RICHARDSON, BOIES, SCHILLER & FLEXNER ON BEHALF OF

01:36PM 1 THE PLAINTIFFS.

01:36PM 2 MR. RAM: MICHAEL RAM OF MORGAN & MORGAN FOR THE

01:36PM 3 PLAINTIFFS.

01:36PM 4 MR. MCGEE: GOOD AFTERNOON, YOUR HONOR.

01:36PM 5 RYAN MCGEE OF MORGAN & MORGAN ALSO FOR THE PLAINTIFFS.

01:36PM 6 MR. LEE: I THINK THAT'S EVERYONE FOR THE PLAINTIFFS

01:36PM 7 IN BROWN.

01:36PM 8 THE COURT: I THINK SO.

01:36PM 9 FOR DEFENDANTS?

01:36PM 10 MR. SCHAPIRO: FOR THE DEFENDANTS, AND FOR THE SAME

01:36PM 11 OF EFFICIENCY I'LL JUST INTRODUCE EVERYONE FROM OUR SIDE.

01:36PM 12 IT'S ANDREW SCHAPIRO FROM QUINN EMANUEL JOINED BY MY

01:36PM 13 COLLEAGUES, JOMAIRE CRAWFORD, JOSEPH ANSORGE, VIOLA TREBICKA,

01:36PM 14 AND STEVE BROOME, AND I THINK YOU CAN RECOGNIZE ALL OF THEM

01:37PM 15 BECAUSE THEIR NAMES ARE IN THE LITTLE SQUARES.

01:37PM 16 THE COURT: THANK YOU.

01:37PM 17 THE CLERK: CALLING CASE 20-CV-5146, CALHOUN, ET

01:37PM 18 AL., VERSUS GOOGLE LLC.

01:37PM 19 COUNSEL, AGAIN, PLEASE IDENTIFY YOURSELVES FOR THE RECORD

01:37PM 20 BEGINNING WITH THE PLAINTIFF.

01:37PM 21 MR. STRAITE: GOOD AFTERNOON, YOUR HONOR.

01:37PM 22 DAVID STRAITE FOR THE PLAINTIFFS NOW WITH THE LAW FIRM

01:37PM 23 DICELLO, LEVITT & GUTZLER.

01:37PM 24 AND I APPRECIATE THE COURT'S PATIENCE WITH SOME OF THE

01:37PM 25 EMAIL ADDRESSES. I HAVE SWITCHED FIRMS.

01:37PM 1 I'D LIKE TO INTRODUCE TO YOU TODAY TWO OF MY COLLEAGUES  
01:37PM 2 WHO ARE NEW HERE FOR THE FIRST TIME, AND ALSO I THINK THE FIRST  
01:37PM 3 TIME EVER APPEARING BEFORE YOUR HONOR.

01:37PM 4 FIRST IS AMY KELLER FROM OUR CHICAGO OFFICE AND WHO IS  
01:37PM 5 CHAIR OF CYBER SECURITY AND DATA PRIVACY PRACTICE.

01:37PM 6 AND ALSO IN CHICAGO, ADAM PROM, FIRST TIME HERE.

01:37PM 7 AND ALSO JOINING ME, YOU ARE FAMILIAR WITH THESE FACES  
01:37PM 8 AND NAMES BY NOW, WE HAVE JAY BARNES AT SIMMONS, HANLY & CONROY  
01:37PM 9 AND HIS COLLEAGUE, AN TRUONG.

01:37PM 10 AND THEN FROM BLEICHMAR FONTI, LESLEY WEAVER, AND HER  
01:38PM 11 COLLEAGUE, ANGELICA ORNELAS.

01:38PM 12 THAT'S IT FOR THE PLAINTIFFS IN CALHOUN.

01:38PM 13 THE COURT: THANK YOU. YOU ARE UP.

01:38PM 14 MR. SCHAPIRO: I'M SORRY. WE'RE THE SAME CAST OF  
01:38PM 15 CHARACTERS. I WAS ASLEEP AT THE WHEEL.

01:38PM 16 SAME AS IN BROWN, YOUR HONOR. ANDREW SCHAPIRO FROM  
01:38PM 17 QUINN EMANUEL FOR GOOGLE AND JOINED BY MY COLLEAGUES AND  
01:38PM 18 FRIENDS, JOSEF ANSORGE, VIOLA TREBICKA, JOMAIRE CRAWFORD, AND  
01:38PM 19 STEPHEN BROOME.

01:38PM 20 THE COURT: THANK YOU.

01:38PM 21 THE CLERK: YOUR HONOR, BEFORE YOU BEGIN, I JUST DO  
01:38PM 22 WANT TO STATE THAT THESE ARE SEALED HEARINGS. THANK YOU.

01:38PM 23 THE COURT: THANK YOU, MS. FANTHORPE.

01:38PM 24 YES, I THINK I RECEIVED A REQUEST FOR SEALING IN BROWN,  
01:38PM 25 AND BECAUSE THERE ARE SOME OVERLAPPING ISSUES THAT I WANT TO

01:38PM 1 ADDRESS, I THOUGHT IT WOULD BE MOST EFFICIENT THIS TIME AND  
01:38PM 2 PERHAPS REACHING THE END OF THIS PROCEDURE WHERE I'VE SEALED  
01:39PM 3 THE HEARING, BUT THE PARTIES WILL RECEIVE THE TRANSCRIPT AND  
01:39PM 4 YOU'LL HAVE SOME TIME TO GET ME A REDACTED TRANSCRIPT, AND THEN  
01:39PM 5 THE TRANSCRIPT WILL BE MADE PUBLIC WITH THOSE REDACTIONS.

01:39PM 6 OKAY. SO WHAT I'D LIKE TO DO TODAY, FIRST I'M GOING TO  
01:39PM 7 TOUCH BASE ON THAT PROCESS AS IT IS NOW, AND WHAT I EXPECT THE  
01:39PM 8 PARTIES TO DO IN ADVANCE OF PUTTING AN ISSUE ON THE CHART THAT  
01:39PM 9 THEN COMES TO ME FOR THIS PROCEEDING, THEN I WANT TO TURN TO --  
01:39PM 10 I HAVE SOME VOCABULARY QUESTIONS THAT MAYBE ARE PERHAPS  
01:39PM 11 OVERDUE, BUT THEY'RE HERE NOW.

01:39PM 12 AND I'LL START IN THE CONTEXT OF BROWN WITH THE CLASS  
01:39PM 13 DEFINITION AND THEN SOME QUESTIONS THAT, AGAIN, VOCABULARY THAT  
01:39PM 14 COME UP IN THE ARGUMENTS, AND TURN TO CALHOUN FOR THE SAME  
01:40PM 15 EXERCISE.

01:40PM 16 AND I WANT TO DO THOSE TOGETHER BECAUSE THAT WILL HELP ME  
01:40PM 17 TO UNDERSTAND SOME OF THE OVERLAP AND DIFFERENCES BETWEEN THE  
01:40PM 18 CASES IN TERMS OF CLASS DEFINITION.

01:40PM 19 THEN WE WILL TURN TO THE ISSUE THAT EXISTS IN BOTH CASES,  
01:40PM 20 WHICH IS THE PRODUCTION OF PLAINTIFFS' DATA, THAT IS, DATA  
01:40PM 21 REGARDING THE PLAINTIFFS FROM GOOGLE, AND WE'LL START WITH  
01:40PM 22 BROWN, EXCUSE ME, AND ISSUE -- I THINK IT'S ISSUE .3, AND THEN  
01:40PM 23 WE'LL TURN TO CALHOUN AND THERE I THINK IT'S ISSUE 1.3. THEN  
01:40PM 24 WE'LL FIGURE OUT NEXT STEPS FROM THERE. BUT THAT'S WHERE I  
01:40PM 25 WANT TO GET US STARTED TODAY.



01:40PM 1 I DO APPRECIATE EVERYONE SHOWING UP, AND I KNOW HOW  
01:40PM 2 IMPORTANT EACH TEAM MEMBER IS, AND YOU EACH HAVE AN INTEGRAL  
01:41PM 3 ROLE, AND I LOOK FORWARD TO HEARING FROM EVERYONE WHO HAS A  
01:41PM 4 CONTRIBUTION TO MAKE TODAY.

01:41PM 5 I WILL ASK YOU IF IT'S -- IF YOU DON'T HAVE A SPEAKING  
01:41PM 6 ROLE OR YOU DON'T KNOW IF YOU HAVE A SPEAKING ROLE TO TURN OFF  
01:41PM 7 YOUR VIDEO BECAUSE WE HAVE QUITE A COLLECTION, AND THAT WILL  
01:41PM 8 HELP ME TO BE SURE I'M FOCUSSING ON THOSE WHO HAVE SOMETHING TO  
01:41PM 9 SAY, AND I WILL ALSO OFFER, AND I DON'T WANT TO CAUSE ANY  
01:41PM 10 DISSENSATION, BUT A TEAM LEADER ON EACH SIDE, OR TEAM LEADERS IF  
01:41PM 11 IT'S A REASONABLE NUMBER, MAY ALSO KEEP THEIR VIDEO ON. I  
01:41PM 12 APPRECIATE THAT YOU LIKE TO FEEL LIKE YOU'RE STILL INVOLVED.  
01:41PM 13 SO THAT IS OKAY.

01:41PM 14 I THINK IF WE JUST -- FOLKS WHO HAVE OTHER ISSUES CAN TURN  
01:41PM 15 THEIRS OFF, THAT SHOULD HELP ME GET US WHERE WE NEED TO BE.

01:41PM 16 OKAY. SO WITH THAT LET ME JUST VERY QUICKLY REVIEW THE  
01:42PM 17 PROCESS AS IT NEEDS TO BE TAKING PLACE BECAUSE I JUST DON'T  
01:42PM 18 WANT THERE TO BE ANY CONFUSION ON THIS, AND THAT IS THAT AS THE  
01:42PM 19 PARTIES SERVE AND RESPOND TO DISCOVERY, OBVIOUSLY DISPUTES COME  
01:42PM 20 UP. YOU HAVE A NUMBER OF DISPUTES NOW THAT HAVE BEEN --  
01:42PM 21 SOMEBODY MIGHT NOT BE ON --

01:42PM 22 MR. SCHAPIRO: DANIELLE, YOU NEED TO MUTE.

01:42PM 23 THE COURT: IF YOU'RE NOT ON MUTE, PLEASE HIT MUTE.

01:42PM 24 OTHERS -- EXCUSE ME. AND WE HAVE A NUMBER OF DISPUTES  
01:42PM 25 THAT HAVE BEEN AROUND FOR A WHILE, AND THE COURT ADDRESSES THEM

01:42PM 1 IN BUILDING BLOCK FASHION BECAUSE THEY'RE OF CERTAIN  
01:42PM 2 COMPLEXITY.

01:42PM 3 BUT WHEN A DISPUTE ARISES AND AS WE'RE WORKING THROUGH  
01:42PM 4 EVOLUTION OF DISPUTES, THE FIRST REQUIREMENT, OF COURSE, IS  
01:43PM 5 MEET AND CONFER BETWEEN THE PARTIES. I WANT TO MAKE IT VERY  
01:43PM 6 CLEAR THAT THE PARTICIPANTS IN MEET AND CONFER HAVE TO HAVE  
01:43PM 7 AUTHORITY TO NEGOTIATE TOWARDS A RESOLUTION OF WHATEVER THE  
01:43PM 8 DISPUTE IS.

01:43PM 9 IT'S IMPORTANT THAT THOSE BE THE PARTICIPANTS IN MEET AND  
01:43PM 10 CONFER SO PROGRESS CAN BE MADE. IT IS NOT JUST A SHOW UP AND  
01:43PM 11 TAKE NOTES FUNCTION, AND THEN REPORT BACK TO THE TEAM, AND THEN  
01:43PM 12 HAVE FURTHER DISCUSSION, AND THEN REPORT THE RESULTS OF THOSE  
01:43PM 13 DISCUSSIONS TO THE OTHER SIDE.

01:43PM 14 I APPRECIATE THAT THERE'S DELEGATION, AND IT'S OFTEN THE  
01:43PM 15 FRESHEST, SMARTEST, HARDEST WORKING LAWYERS ARE THE MORE JUNIOR  
01:43PM 16 MEMBERS OF THE TEAM, AND IF THAT'S WHO CAN HAVE THE AUTHORITY  
01:43PM 17 AND RUN THE MEET AND CONFER, GREAT. I DON'T CARE WHAT LEVEL  
01:43PM 18 ANYBODY IS, BUT WHEN YOU HAVE A MEET AND CONFER OVER A  
01:43PM 19 DISCOVERY DISPUTE, YOU HAVE TO HAVE AUTHORITY TO NEGOTIATE.  
01:44PM 20 YOU MAY HAVE TO TAKE SOMETHING BACK FOR CLIENT APPROVAL,  
01:44PM 21 UNDERSTOOD, BUT YOU'VE GOT TO HAVE PEOPLE WITH AUTHORITY.

01:44PM 22 YOUR MEET AND CONFER SESSIONS NEED TO BE APPROACHED AS A  
01:44PM 23 PROBLEM SOLVING SESSIONS. THIS ISN'T JUST CREATE THE RECORD SO  
01:44PM 24 THEN WE CAN LAY IT OUT FOR THE JUDGE. IT NEEDS TO BE AN  
01:44PM 25 EARNEST AND GOOD FAITH EFFORT AT RESOLVING THE DISPUTES.

1 AND I SEE THAT BECAUSE I SEE THE CHARTS WITH DISPUTES  
2 WHERE THE PARTIES HAVE MADE PROGRESS THROUGH MEET AND CONFER  
3 AND SOMETIMES HAVE RESOLVED OR ARE CONFIDANT THAT THEY ARE  
4 MOVING TOWARDS RESOLUTION, AND I APPRECIATE THAT. I WANT TO BE  
5 SURE THAT THAT MENTALITY AND APPROACH TO THE SESSIONS  
6 CONTINUES.

7 WHEN AN ISSUE -- WHEN YOU TRULY REACH IMPASSE, THAT IS  
8 WHERE IT GOES ON THE CHART TO COME FOR THE COURT'S ATTENTION.

9 THERE WILL BE NO OTHER BRIEFING ON THE ISSUE UNLESS I ASK  
10 FOR IT. WHERE IN THE NORMAL COURSE YOU WOULD SAY, OKAY, WE'VE  
11 REACHED AN IMPASSE, LET'S DO A FIVE-PAGE JOINT DISCOVERY  
12 LETTER. INSTEAD OF THAT IT GOES ON THE CHART TO GET TEED UP  
13 FOR OUR NEXT SESSION.

14 AND IF I WANT FURTHER BRIEFING AND IF EITHER OR BOTH  
15 PARTIES FEELS STRONGLY THAT THEY NEED IT, YOU CAN ASK FOR IT.  
16 I'M NOT GOING TO GRANT IT EVERY TIME PEOPLE ASK FOR IT. I'LL  
17 JUST TELL YOU THAT BECAUSE A NUMBER OF THESE I CAN DEAL WITH.

18 BUT I DO APPRECIATE THAT WE HAVE A LOT OF ISSUES. SOME  
19 ARE COMPLEX. MANY ARE NOT. AND WE WANT TO -- I WANT TO GET  
20 THE INFORMATION THAT I NEED IN THE MOST EFFICIENT WAY POSSIBLE  
21 TO KEEP THE CASE -- TO RESOLVE ISSUES AND KEEP THE CASE MOVING  
22 FORWARD.

23 OKAY. SO WITH THAT SAID, I WANT TO TURN NOW TO THE FIRST  
24 ISSUE. AND I'M GOING -- OVERALL I'M GOING TO FOCUS ON THE  
25 CRITICAL ISSUES THAT THE PARTIES HAVE IDENTIFIED AND THEN, YOU

01:46PM 1 KNOW, I'LL LET YOU KNOW WHAT I'LL DO WITH THE REMAINING ISSUES  
01:46PM 2 IN DUE COURSE.

01:46PM 3 BUT OF THE CRITICAL ISSUES, AS I SAY, THE OVERLAPPING  
01:46PM 4 ISSUE THAT CERTAINLY APPEARS TO ME TO BE AN OVERLAPPING ISSUE,  
01:46PM 5 I'M SURE IT'S NOT IDENTICAL, BUT IT IS PRODUCTION OF THE  
01:46PM 6 PLAINTIFFS' DATA.

01:46PM 7 OH, EXCUSE ME. OF COURSE, I SKIPPED MY MOST IMPORTANT  
01:46PM 8 STEP WHICH I WAS SO EXCITED ABOUT WHICH WAS THE VOCABULARY. SO  
01:46PM 9 EXCUSE ME. LET ME JUST BACK UP.

01:46PM 10 MS. TREBICKA: YOUR HONOR?

01:46PM 11 THE COURT: YES.

01:46PM 12 MS. TREBICKA: BEFORE WE MOVE ON, I JUST HAVE A  
01:46PM 13 QUICK QUESTION TO CLARIFY SOMETHING IN WHAT YOU JUST SAID,  
01:46PM 14 WHICH IS NO BRIEFING UNLESS YOUR HONOR SPECIFICALLY ORDERS IT.

01:47PM 15 WE HAVE SEEN SOME OF THE JOINT SUBMISSIONS TURN RATHER  
01:47PM 16 LENGTHY, AND I WAS WONDERING IF YOU HAVE ANY GUIDANCE ON LIMITS  
01:47PM 17 TO THE JOINT SUBMISSION, TO WHATEVER BLURB GOES IN THE JOINT  
01:47PM 18 SUBMISSION.

01:47PM 19 THE COURT: WE'LL ADDRESS THAT IN DUE COURSE. THANK  
01:47PM 20 YOU, MS. TREBICKA.

01:47PM 21 SO VOCABULARY. LET'S START WITH BROWN. I PUT MYSELF WITH  
01:47PM 22 REGARDS TO THE CLASS DEFINITION, AND I SEE THE KEY COMPONENTS  
01:47PM 23 AS PRIVATE BROWSING, NOT LOGGED INTO A GOOGLE ACCOUNT WHERE THE  
01:47PM 24 USER ACCESSES THE WEBSITES THAT CONTAIN GOOGLE ANALYTICS OR  
01:47PM 25 AD MANAGER.

01:47PM 1 SO -- AND THAT'S -- I GET THAT. PRIVATE BROWSING, OKAY,  
01:47PM 2 YOU'RE NOT LOGGED INTO YOUR ACCOUNT.

01:47PM 3 SO FROM THERE MY QUESTIONS ARE, AND I'LL HEAR FIRST  
01:48PM 4 FROM -- ON BEHALF OF BROWN AND THEN FROM GOOGLE, BUT LET'S TURN  
01:48PM 5 TO WHAT IS SYNCED, WHEN A USER IS SYNCED AND NOT SYNCED AND HOW  
01:48PM 6 THAT RELATES.

01:48PM 7 SO WHO HAS THE ISSUE FOR BROWN, PLEASE?

01:48PM 8 MR. MAO: GOOD AFTERNOON, YOUR HONOR. THIS IS  
01:48PM 9 MARK MAO FROM BOIES, SCHILLER & FLEXNER.

01:48PM 10 I JUST WANT TO CLARIFY THAT. ALTHOUGH SYNC DOES TOUCH ON  
01:48PM 11 OUR CASE, I DO BELIEVE THAT THAT IS AN ISSUE FOR THE CALHOUN  
01:48PM 12 PLAINTIFFS THAT I'M AFRAID THAT I WILL BUTCHER IF I TRY TO  
01:48PM 13 EXPLAIN. BUT I -- IF YOUR HONOR WOULD BE PLEASED, I CAN DO MY  
01:48PM 14 BEST TO TRY TO EXPLAIN WHAT I UNDERSTAND FROM OUR END.

01:48PM 15 THE COURT: WELL, IT CERTAINLY COMES UP IN ARGUMENT  
01:48PM 16 IN THE BROWN CASE, AT LEAST THE TERM IS USED. SO I WANT TO  
01:49PM 17 HEAR -- I'LL HEAR FROM BROWN IN THE FIRST INSTANCE.

01:49PM 18 AND DON'T WORRY, CALHOUN, YOU'LL HAVE AN OPPORTUNITY.

01:49PM 19 MR. MAO: OKAY.

01:49PM 20 THE COURT: GO AHEAD, MR. MAO.

01:49PM 21 MR. MAO: RIGHT. SO THIS IS WITHOUT CROSS USE AND  
01:49PM 22 MY UNDERSTANDING.

01:49PM 23 SO MY UNDERSTANDING CURRENTLY IS THAT GOOGLE USES THREE  
01:49PM 24 PERSISTENT IDENTIFIERS TO LOG AND TRACK DEVICES FOR  
01:49PM 25 INDIVIDUALS.

01:49PM 1           THERE IS THE GAIA I.D. AND THEN AT LEAST TWO TWICE-BAKED  
01:49PM 2           COOKIES. ONE IS THE [REDACTED] AND ONE IS THE [REDACTED]. THE  
01:49PM 3           GAIA I.D., MY UNDERSTANDING, IS THAT THAT IS FOR LOG IN USERS  
01:49PM 4           OR AUTHENTICATED USERS.

01:49PM 5           I AM UNSURE, YOUR HONOR, IF AND HOW THAT WORKS WITH SYNC,  
01:49PM 6           AND THAT IS SOMETHING WHICH WE'RE TRYING TO FIGURE OUT IN  
01:49PM 7           DISCOVERY.

01:49PM 8           FOR [REDACTED] AND FOR [REDACTED] THOSE ARE FOR LOGGED OUT OR  
01:50PM 9           UNAUTHENTICATED USERS WHICH THEIR DATA, I BELIEVE, IS STILL  
01:50PM 10          BEING SYNCED EXCEPT TO A DIFFERENT DATABASE TABLE THAT IS BASED  
01:50PM 11          UPON THE [REDACTED] AND THE [REDACTED] I.D.'S.

01:50PM 12          THE COURT: OKAY. SO LET ME BACK UP RIGHT THERE,  
01:50PM 13          MR. MAO. AGAIN, I'M JUST HEARING FROM BROWN AT THE MOMENT.

01:50PM 14          SO WHETHER ONE IS LOGGED INTO THE ACCOUNT OR NOT LOGGED  
01:50PM 15          INTO THE ACCOUNT, DOES THAT DETERMINE WHETHER -- DOES THAT  
01:50PM 16          RELATE TO AUTHENTICATED AND UNAUTHENTICATED?

01:50PM 17          MR. MAO: IT DOES, YOUR HONOR. AND I BELIEVE WHAT  
01:50PM 18          HAPPENS FROM WHAT I'VE SEEN IS THAT YOU HAVE BASICALLY THESE  
01:50PM 19          THREE TABLES KIND OF PAIRED IN PARALLEL. THERE IS SOME  
01:50PM 20          ARGUMENT BETWEEN AND AMONGST THE PARTIES AS TO WHEN THEY ARE  
01:50PM 21          KIND OF CORRELATED IN PARALLEL, WHETHER OR NOT THAT IS A  
01:50PM 22          MERGING OF DATA OR WHAT GOOGLE JUST CALLS A LINKING OF THE  
01:51PM 23          DATA.

01:51PM 24          FROM DOCUMENTS WHICH WE HAVE SEEN IN BROWN, OUR  
01:51PM 25          UNDERSTANDING IS THAT THE GAIA I.D.'S, OR AUTHENTICATED LOGGED

01:51PM 1 IN USERS, ARE OFTEN PAIRED OR LINKED, OR AT LEAST IN OUR  
01:51PM 2 DEFINITION MERGED, BUT AT LEAST CORRELATED AND CONFIRMED  
01:51PM 3 AGAINST THE UNAUTHENTICATED DATA.

01:51PM 4 THE COURT: WELL, THAT'S A DIFFERENT ISSUE THAT  
01:51PM 5 WE'LL TALK ABOUT IN MORE DETAIL.

01:51PM 6 MR. MAO: I'M JUST TRYING TO EXPLAIN THE TERMS.

01:51PM 7 THE COURT: I UNDERSTAND. BUT FOR YOUR PURPOSES  
01:51PM 8 AUTHENTICATED AND UNAUTHENTICATED RELATE TO WHETHER OR NOT THE  
01:51PM 9 USER IS LOGGED INTO A GOOGLE ACCOUNT OR NOT?

01:51PM 10 MR. MAO: YEAH, BECAUSE THE -- I WOULD SAY THAT THE  
01:51PM 11 INCOGNITO AND PRIVATE STATES ARE BY DEFINITION LOGGED OUT  
01:51PM 12 STATES, YOUR HONOR.

01:51PM 13 THE COURT: OKAY. ALL RIGHT.

01:52PM 14 SO THEN WITH REGARDS TO THE PROPOSED CLASS DEFINITIONS IN  
01:52PM 15 BROWN OBVIOUSLY -- OKAY. SO IF SOMEONE IS IN -- IT'S FOR  
01:52PM 16 PRIVATE BROWSING SO THEY ARE -- THEY WOULD BE BY DEFINITION  
01:52PM 17 LOGGED OUT?

01:52PM 18 MR. MAO: THEY WOULD BE LOGGED OUT OF GAIA, YES,  
01:52PM 19 YOUR HONOR.

01:52PM 20 THE COURT: OKAY.

01:52PM 21 MR. MAO: BUT WE BELIEVE THAT THE TWICE-BAKED  
01:52PM 22 COOKIES, WHICH HAVE BEEN AROUND FOR A WHILE --

01:52PM 23 THE COURT: I UNDERSTAND. I UNDERSTAND.

01:52PM 24 MR. MAO: RIGHT.

01:52PM 25 THE COURT: OKAY.

01:52PM 1 MR. MAO: YEP.

01:52PM 2 THE COURT: OKAY. I'M JUST MAKING A NOTE. ALL  
01:53PM 3 RIGHT.

01:53PM 4 SO LET ME TURN TO CALHOUN, AND THEN I'LL HEAR FROM GOOGLE  
01:53PM 5 AT ONE TIME.

01:53PM 6 SO WITH REGARDS TO CALHOUN AS I UNDERSTAND THE PROPOSED  
01:53PM 7 CLASS DEFINITION IT IS FOR USERS IN CHROME WHO ARE NOT SYNCED  
01:53PM 8 TO A GOOGLE ACCOUNT.

01:53PM 9 MR. BARNES: THAT'S CORRECT, YOUR HONOR.

01:53PM 10 THE COURT: OKAY. AND WHO IS SPEAKING, PLEASE?

01:53PM 11 MR. BARNES: THIS IS JAY BARNES FOR THE PLAINTIFFS.

01:53PM 12 THE COURT: OKAY.

01:53PM 13 MR. BARNES: YES, THAT IS CORRECT.

01:53PM 14 THE COURT: AND THEN HOW DOES THAT RELATE TO SYNCED  
01:53PM 15 AND UNSYNCED?

01:53PM 16 MR. BARNES: OKAY. I THINK YOUR HONOR STATED IT  
01:54PM 17 CORRECTLY WITH YOUR FIRST -- YOU DESCRIBED FOUR DIFFERENT  
01:54PM 18 STATES: INCOGNITO, SIGNED OUT, SIGNED INTO A GOOGLE ACCOUNT,  
01:54PM 19 WHICH IS DIFFERENT THAN -- I DON'T WANT TO GET TOO FAR INTO THE  
01:54PM 20 WEEDS HERE. AND THEN THE FOURTH ONE IS SYNCED.

01:54PM 21 THE COURT: WAIT A MINUTE. YOU DID -- OH, DID YOU  
01:54PM 22 DO INCOGNITO, SIGNED IN, SIGNED OUT?

01:54PM 23 MR. BARNES: INCOGNITO, SIGNED OUT, SIGNED INTO A  
01:54PM 24 GOOGLE ACCOUNT, WHICH AUTO SIGNS YOU INTO CHROME WITHOUT THE  
01:54PM 25 USER ACTUALLY SIGNING INTO CHROME, AND THEN THERE'S THE SYNCED



01:54PM 1 STATE.

01:54PM 2 I BELIEVE THAT ANY SINGLE INDIVIDUAL MIGHT AT DIFFERENT  
01:54PM 3 POINTS IN TIME BE IN THE BROWN CLASS OR IN THE CALHOUN CLASS,  
01:54PM 4 BUT AT NO POINT IN TIME, NO SPECIFIC POINT UNIQUE POINT IN TIME  
01:54PM 5 ARE THEY IN BOTH CLASSES BECAUSE TO BE INCOGNITO, YOU CANNOT BE  
01:54PM 6 IN ONE OF THOSE TWO STATES THAT ARE THE CALHOUN CLASS  
01:55PM 7 DEFINITION, WHICH IS THE SIGNED AND SIGNED OUT STATE.  
01:55PM 8 INCOGNITO IS A SEPARATE STATE OF BEING.

01:55PM 9 AND, YOUR HONOR, THOSE ARE GOOGLE'S TERMS FOR THOSE  
01:55PM 10 STATES. WE WOULD SAY --

01:55PM 11 THE COURT: AH, AH, AH, AH, AH.

01:55PM 12 MR. BARNES: OKAY. FINE.

01:55PM 13 THE COURT: I CAN ONLY -- SO EXPLAIN TO ME,  
01:55PM 14 MR. BARNES, FOR THE CALHOUN CLASS THE SIGNED IN AND SIGNED OUT  
01:55PM 15 DISTINCTIONS BECAUSE I THOUGHT THEY WERE NOT SYNCED TO A GOOGLE  
01:55PM 16 ACCOUNT.

01:55PM 17 MR. BARNES: THAT'S RIGHT, THEY'RE NOT BECAUSE  
01:55PM 18 THERE'S A DISTINCTION BETWEEN SIGNED IN VERSUS SYNCED.

01:55PM 19 THERE IS NO -- OUR CONTENTION IS THAT GOOGLE STORES IT ALL  
01:55PM 20 ASSOCIATED WITH THE PLAINTIFF IN THEIR ACCOUNT.

01:55PM 21 THE COURT: THAT'S NOT WHAT I'M ASKING.

01:55PM 22 MR. BARNES: SO YOU'VE BECOME SIGNED IN IF YOU'RE  
01:56PM 23 USING THE CHROME BROWSER AND YOU SIGN INTO GMAIL, YOUTUBE, OR  
01:56PM 24 ANY OTHER GOOGLE CONSUMER FACING SERVICE.

01:56PM 25 NOW, IF YOU LEAVE THAT SERVICE WITHOUT FORMALLY LOGGING

01:56PM 1 OFF OF THAT SERVICE, GOOGLE AUTOMATICALLY SIGNS YOU INTO CHROME  
01:56PM 2 WITHOUT YOU TAKING ANY SPECIFIC ACTION TO SIGN INTO CHROME AND  
01:56PM 3 WITHOUT TELLING YOU, HEY, YOU'RE ALSO SIGNING INTO CHROME,  
01:56PM 4 WHICH MEANS A WHOLE BUNCH OF DIFFERENT THINGS.

01:56PM 5 IN ORDER TO BECOME SYNCED, THE USER HAS TO CLICK A  
01:56PM 6 DIFFERENT BUTTON TO GET INTO THAT SYNCED STATE.

01:56PM 7 THE COURT: WHAT IS THE DIFFERENCE BETWEEN BEING  
01:56PM 8 SYNCED AND SIGNED IN?

01:56PM 9 MR. BARNES: WELL, OUR CONTENTION IS ALL OF THE  
01:56PM 10 DATA, WHETHER YOU'RE SIGNED IN OR YOU'RE SYNCED, GOOGLE  
01:57PM 11 ASSOCIATES DIRECTLY WITH YOUR GOOGLE ACCOUNT IN VIOLATION OF  
01:57PM 12 ITS PROMISES.

01:57PM 13 GOOGLE'S POSITION IS --

01:57PM 14 THE COURT: NO. WHAT IS SYNCED? I DON'T WANT TO  
01:57PM 15 HEAR ARGUMENT.

01:57PM 16 IN YOUR -- AS YOU'VE DEFINED THE CLASS AND AS YOU'RE -- AS  
01:57PM 17 THE COMPLAINT IN CALHOUN IS FRAMED, WHAT IS, WHAT IS THE  
01:57PM 18 SIGNIFICANCE OF BEING SYNCED? WHAT IS BEING SYNCED AND WHAT IS  
01:57PM 19 THE SIGNIFICANCE?

01:57PM 20 MR. BARNES: WELL, WHAT HAPPENS IS THAT THE -- WHEN  
01:57PM 21 YOU'RE SIGNED IN -- GOOGLE SAVES THE SAME DATA REGARDLESS OF  
01:57PM 22 WHETHER YOU'RE SIGNED OR SYNCED TO YOUR GOOGLE ACCOUNT.

01:57PM 23 SO YOU'RE ASKING WHAT IS THE FUNDAMENTAL DISTINCTION  
01:57PM 24 BETWEEN THE TWO AND HOW GOOGLE TREATS THE DATA.

01:57PM 25 THE COURT: NO, NO, THAT'S NOT WHAT I'M ASKING. I'M

01:57PM 1 NOT ASKING HOW GOOGLE DOES ANYTHING.

01:57PM 2 MR. BARNES: THE DISTINCTION IS IN ORDER TO BECOME  
01:57PM 3 SYNCED, YOU -- THERE'S ANOTHER BUTTON TO CLICK TO SAY, HEY, I  
01:58PM 4 WANT TO SYNC THIS DATA SO GOOGLE CAN ASSOCIATE IT WITH MY  
01:58PM 5 GOOGLE ACCOUNT.

01:58PM 6 MR. SCHAPIRO: I THINK I MIGHT BE ABLE TO CLARIFY.  
01:58PM 7 I DON'T WANT TO INTERRUPT, BUT I THINK WE ACTUALLY AGREE. I  
01:58PM 8 JUST WANT TO -- IF I MAY, YOUR HONOR --

01:58PM 9 MR. BARNES: I THINK MR. SCHAPIRO --

01:58PM 10 MR. SCHAPIRO: -- I CAN ANSWER AT A VERY HIGH LEVEL  
01:58PM 11 OF GENERALITY.

01:58PM 12 THE COURT: HANG ON, MR. SCHAPIRO.

01:58PM 13 MR. BARNES, CAN I TURN TO MR. SCHAPIRO?

01:58PM 14 MR. BARNES: YES, YOU MAY.

01:58PM 15 MR. SCHAPIRO: SO IN THE MOST BASIC SENSE, BECAUSE  
01:58PM 16 ON THIS I THINK WE ALL AGREE ON WHAT THE PRODUCTS DO, IF I'M A  
01:58PM 17 USER AND I HAVE A GMAIL ACCOUNT, I CAN CHOOSE EITHER TO LOG IN  
01:58PM 18 OR LOG OUT TO MY GOOGLE ACCOUNT. I'M SURE MOST PEOPLE,  
01:58PM 19 PROBABLY YOUR HONOR OR YOUR CLERKS HAVE DONE THAT AT TIMES AND  
01:58PM 20 YOU'RE LOGGED IN AS A USER.

01:58PM 21 SEPARATELY, IF I WANT TO, WITH CHROME, TO HAVE  
01:59PM 22 PERSONALIZATION ACROSS DEVICES, SO I WANT TO HAVE THE SAME  
01:59PM 23 BOOKMARKS ON MY PHONE AS ON MY LAPTOP. I WANT TO HAVE THE  
01:59PM 24 PASSWORDS SAVED IN ONE PLACE AND THEN USEABLE ACROSS DEVICES.  
01:59PM 25 THAT'S SYNCING. AND YOU CAN CHOOSE TO HAVE SYNC ON OR SYNC

01:59PM 1 OFF.

01:59PM 2 SO, FOR EXAMPLE, I HAVE GOT MY OFFICE COMPUTER HERE, AND I  
01:59PM 3 HAVE THE SAME BOOKMARKS THAT I HAVE AT HOME BECAUSE IT'S A  
01:59PM 4 CONVENIENT FEATURE TO SYNC.

01:59PM 5 ONE COULD CHOOSE TO SIGN INTO A GOOGLE ACCOUNT AND NOT USE  
01:59PM 6 SYNC. SOME PEOPLE DON'T USE SYNC OR THEY DON'T HAVE IT ON SOME  
01:59PM 7 DEVICES.

01:59PM 8 BUT THEY STILL CAN -- I CAN GO TO A HOTEL BUSINESS CENTER,  
01:59PM 9 SIGN INTO MY GOOGLE ACCOUNT, AND AT THAT POINT I'M SIGNED IN.  
01:59PM 10 I MAY CHOOSE NOT TO DO ANY SYNCING.

01:59PM 11 WITH THAT I WILL STOP. I JUST WANTED TO MAKE THAT CLEAR.

01:59PM 12 THE COURT: OKAY. ALL RIGHT. LET ME GO BACK TO  
01:59PM 13 MR. BARNES, AND THEN I'LL COME BACK TO YOU, MR. SCHAPIRO.

01:59PM 14 SO DOES WHETHER OR NOT -- DOES SYNCING RELATE TO DEVICES?

02:00PM 15 MR. BARNES: YES. YES. IN ORDER TO SYNC, GOOGLE  
02:00PM 16 HAS TO KNOW WHAT DEVICES NEED TO BE SYNCED.

02:00PM 17 THE COURT: OKAY. ALL RIGHT. AND YOU STARTED OUT,  
02:00PM 18 MR. BARNES, WITH THERE BEING FOUR STATES, THE FIRST OF WHICH IS  
02:00PM 19 INCOGNITO. IS THAT PRIVATE BROWSING? IS THAT SOMETHING  
02:00PM 20 DIFFERENT? I ALWAYS THINK OF IT AS PRIVATE BROWSING.

02:00PM 21 MR. BARNES: YEAH. I THINK GOOGLE CALLS IT  
02:00PM 22 INCOGNITO. I THINK MR. MAO REFERRED TO IT AS PRIVATE BROWSING  
02:00PM 23 AT ONE POINT. YOU KNOW, I -- THAT'S IN THE BROWN LANE.

02:00PM 24 THE COURT: UNDERSTOOD. OKAY. THAT'S HELPFUL.

02:01PM 25 MR. SCHAPIRO, DID YOU HAVE ANYTHING YOU WANTED TO ADD TO

02:01PM 1 WHAT WE HEARD, I HEARD FROM MR. MAO OR -- WHOOPS -- MR. BARNES?

02:01PM 2 MR. BARNES: CAN I ADDRESS THE AUTHENTICATED VERSUS

02:01PM 3 UNAUTHENTICATED QUESTION?

02:01PM 4 THE COURT: YES.

02:01PM 5 MR. BARNES: OKAY. AUTHENTICATED DATA IN GOOGLE

02:01PM 6 SPEAK IS DATA THAT GOOGLE DIRECTLY ASSOCIATES AND PUTS INTO A

02:01PM 7 GOOGLE ACCOUNT BASED ON A COOKIE THAT IS ASSOCIATED WITH A

02:01PM 8 SIGN IN TO A GOOGLE SERVICE.

02:01PM 9 UNAUTHENTICATED DATA --

02:01PM 10 THE COURT: SAY THAT AGAIN. I THINK I HAVE MOST OF

02:01PM 11 THAT ALREADY IN MY NOTES. LET ME CHECK.

02:01PM 12 MR. BARNES: AUTHENTICATED DATA IS DATA THAT GOOGLE

02:01PM 13 WOULD PLACE INTO A SPECIFIC ACCOUNT RELATING TO A GOOGLE USER

02:01PM 14 IN ITS DATABASES THAT ARE GENERALLY ACCESSIBLE TO GOOGLE. SO

02:02PM 15 IT'S SORT OF A DIRECT ASSOCIATION WITH THE USER, LET'S PLACE IT

02:02PM 16 IN THIS BUCKET.

02:02PM 17 THE COURT: AND UNAUTHENTICATED?

02:02PM 18 MR. BARNES: UNAUTHENTICATED DATA IS DEVICE DATA.

02:02PM 19 IT CAN BE IN SOME -- IT'S DATA THAT GOOGLE HAS ASSOCIATED WITH

02:02PM 20 A DEVICE.

02:02PM 21 NOW, GOOGLE HAS A SYSTEM THAT TIES THE TWO TOGETHER.

02:02PM 22 THE COURT: WELL, WE'RE GOING TO GET INTO THAT.

02:02PM 23 DON'T WORRY.

02:02PM 24 MR. BARNES: SO UNAUTHENTICATED DATA IS DEVICE DATA,

02:02PM 25 BUT IT'S ALSO PERSONAL INFORMATION UNDER LAW AND IT'S CONNECTED

02:02PM 1 TO --

02:02PM 2 THE COURT: I'VE GOT IT, MR. BARNES. I'VE GOT IT.

02:02PM 3 MR. MAO, BEFORE I TURN TO --

02:02PM 4 MR. MAO: JUST REAL QUICK. SO JUST TWO QUICK  
02:02PM 5 NUANCES HERE THAT'S A LITTLE BIT DIFFERENT BETWEEN THE BROWN  
02:02PM 6 CASE AND THE CALHOUN CASE.

02:02PM 7 FOR LOGGED IN VERSUS NOT LOGGED IN, WHEN YOU INTRODUCE  
02:03PM 8 GOOGLE ANALYTICS, WE BELIEVE THAT GOOGLE ANALYTICS IS TIED WITH  
02:03PM 9 UNAUTHENTICATED DATA IN GOOGLE SPEAK, BEFORE THEIR CLIENT  
02:03PM 10 SPEAK, IT COMES IN WITH A LOGGED IN IDENTIFIER.

02:03PM 11 THE COURT: I UNDERSTAND. I UNDERSTAND. THAT'S ALL  
02:03PM 12 ARGUMENT FOR DOWN THE ROAD.

02:03PM 13 MR. MAO: OH, RIGHT, RIGHT, RIGHT, RIGHT.

02:03PM 14 BUT THEN HERE'S THE SECOND THING, YOUR HONOR. THERE'S THE  
02:03PM 15 STATE AND THEN THERE'S THE RECORD. AND IT, IT -- IN A BROWSING  
02:03PM 16 SESSION WHAT WAS A PAST BROWSING TAB THAT WAS OPENED IN CHROME,  
02:03PM 17 FOR EXAMPLE, OR EVEN IN OTHER BROWSERS, EVEN IF IT'S  
02:03PM 18 UNAUTHENTICATED OR NOT SIGNED IN, THAT CAN END UP IN THE SIGNED  
02:03PM 19 IN STATE IF YOU SIGN IN OR YOU GET OTHERWISE TAGGED IN A  
02:03PM 20 DIFFERENT TAB.

02:03PM 21 THE COURT: WE'LL GET THERE, MR. MAO.

02:03PM 22 MR. MAO: RIGHT. SORRY. I WAS JUST TRYING TO  
02:03PM 23 CLARIFY THAT, THAT THERE WAS SOME OF THAT IN TERMS OF THE  
02:03PM 24 DEFINITIONS.

02:03PM 25 MR. BARNES: YOUR HONOR --

02:03PM 1 THE COURT: NO, NO, NO. THAT'S ENOUGH. THAT'S  
02:03PM 2 ENOUGH. THANK YOU.

02:04PM 3 MR. SCHAPIRO FROM GOOGLE?

02:04PM 4 MR. SCHAPIRO: YES. WE'RE TRYING REALLY HARD NOT TO  
02:04PM 5 ENGAGE IN ARGUMENT AND JUST THE DEFINITIONS NOW. THERE ARE  
02:04PM 6 MANY THINGS THAT ARE MISTAKEN, AND I WANT TO HAND IT OFF TO MY  
02:04PM 7 MORE TECHNICALLY MINDED COLLEAGUE, JOEY ANSORGE, WHO WILL TAKE  
02:04PM 8 TWO MINUTES AND JUST CLEAR UP A COUPLE OF THINGS.

02:04PM 9 THE COURT: ALL RIGHT. BUT, MR. ANSORGE, I'LL  
02:04PM 10 REMIND YOU, AS I HAVE REMINDED MR. MAO AND MR. BARNES, THAT WE  
02:04PM 11 NEED TO FOCUS ON MY QUESTION, WHICH IS I'M JUST TRYING TO GET  
02:04PM 12 DEFINITION. AND I APPRECIATE THAT OBVIOUSLY THE PARTIES  
02:04PM 13 DISAGREE AS TO, YOU KNOW, WHERE THE LINES ON SOME OF THESE  
02:04PM 14 DEFINITIONS ARE DRAWN.

02:04PM 15 SO GO AHEAD.

02:04PM 16 MR. ANSORGE: YES, AND I'LL BE VERY BRIEF,  
02:04PM 17 YOUR HONOR. WE JUST WANTED TO ADD A FEW POINTS.

02:04PM 18 THE FIRST IS THAT WHEN WE'RE TALKING ABOUT SYNC, A USER  
02:04PM 19 ENABLES SYNC ON THEIR DEVICE. SO IT'S DIFFERENT FROM AN  
02:04PM 20 ACCOUNT SETTING. IT'S SPECIFIC TO THE DEVICE. TO BE ABLE TO  
02:05PM 21 SYNC YOUR PHONE WITH YOUR LAPTOP AND DESKTOP AT WORK, AND YOU  
02:05PM 22 WOULD HAVE TO GO INTO THOSE DEVICES AT THE DEVICE LEVEL AND SET  
02:05PM 23 ENABLE SYNC ON THE CHROME BROWSER SETTING.

02:05PM 24 I ALSO WANTED TO TOUCH ON THE AUTHENTICATED AND  
02:05PM 25 UNAUTHENTICATED --

02:05PM 1 THE COURT: SO WAIT A MINUTE. IS THAT A CHROME  
02:05PM 2 FEATURE OR IS THAT --

02:05PM 3 MR. ANSORGE: THAT'S RIGHT, YOUR HONOR, THAT'S --  
02:05PM 4 IT'S A CHROME FEATURE. SO IT'S A CHROME PERSONALIZATION  
02:05PM 5 FEATURE. OTHER BROWSERS ALSO HAVE SYNC FEATURES, BUT THE ONE  
02:05PM 6 AT ISSUE HERE IS JUST RELATED TO CHROME.

02:05PM 7 THE COURT: OKAY. GO AHEAD, MR. ANSORGE.

02:05PM 8 MR. ANSORGE: IN THE SMALL TIME THAT IS REMAINING,  
02:05PM 9 YOUR HONOR, I ALSO WANTED TO VERY BRIEFLY TOUCH ON THE  
02:05PM 10 AUTHENTICATED AND UNAUTHENTICATED DATA DISTINCTION --

02:05PM 11 THE COURT: UH-HUH.

02:05PM 12 MR. ANSORGE: -- THAT PLAINTIFFS' COUNSEL HAD  
02:05PM 13 REFERENCED.

02:05PM 14 AS YOU MAY RECALL WHEN WE WERE LOOKING AT THE CONSENT  
02:05PM 15 NOTICES, ONE OF THE POINTS WE WERE MAKING IS THAT GOOGLE DOES  
02:05PM 16 NOT HAVE A REGISTRY OF USERS IN THE SENSE THAT YOU DON'T NEED  
02:05PM 17 AN I.D. TO SIGN UP TO GET A GOOGLE ACCOUNT. YOU CAN PUT IN ANY  
02:06PM 18 SPECIFIC INFORMATION. SOME PEOPLE MIGHT SAY IT'S JOEY THE BEAR  
02:06PM 19 AND HIS AGENDA IS UNKNOWN AND HIS BIRTH DATE IS SOMETHING THAT  
02:06PM 20 I'M INVENTING.

02:06PM 21 SO TO ACTUALLY BE ABLE TO FIGURE OUT, WELL, WHAT DATA IS  
02:06PM 22 ASSOCIATED WITH WHAT PARTICULAR USER, GOOGLE WILL USE THE  
02:06PM 23 PEOPLE WHO ARE AUTHENTICATED TO ACCESS THAT ACCOUNT AS THE  
02:06PM 24 PROXY, AND THAT'S THE IMPORTANT DISTINCTION BETWEEN  
02:06PM 25 AUTHENTICATED AND UNAUTHENTICATED USER.



02:06PM 1 AND I WOULD WANT TO --

02:06PM 2 THE COURT: I'M NOT SURE I FOLLOWED YOU THERE,  
02:06PM 3 MR. ANSORGE.

02:06PM 4 MR. ANSORGE: YEAH. SO LET ME TRY ONE MORE TIME TO  
02:06PM 5 SEE IF I COULD DO IT CRISPLY.

02:06PM 6 THE AUTHENTICATED DATA AT GOOGLE IS TIED TO A GOOGLE  
02:06PM 7 ACCOUNT AND BECAUSE GOOGLE DOES NOT USE I.D.'S OR OTHER FORMS  
02:06PM 8 LIKE YOU DON'T USE A DRIVER'S LICENSE TO SIGN UP, THERE'S NOT A  
02:06PM 9 MOMENT WHERE YOUR IDENTITY IS VERIFIED AS JOSEF ANSORGE, THIS  
02:06PM 10 IS THE PERSON IN THIS PARTICULAR GOOGLE ACCOUNT.

02:06PM 11 THE CLOSEST THAT HAPPENS IS WITHIN THE AUTHENTICATION  
02:07PM 12 STRUCTURE. SO WHEN YOU'RE SIGNED INTO A GOOGLE ACCOUNT, GOOGLE  
02:07PM 13 WILL USE THE PEOPLE WHO HAVE THE PERMISSIONS FOR THAT ACCOUNT  
02:07PM 14 WILL BE SET AS BEING AUTHENTICATED FOR ACCESSING IT, AND THE  
02:07PM 15 IMPORTANT DISTINCTION THERE IS THAT THERE'S A LOT OF ACTIVITY  
02:07PM 16 ON THE INTERNET WHERE USERS ARE NOT SIGNED IN, AND IT'S NOT  
02:07PM 17 APPARENT THAT THIS IS SOMETHING THAT IS TIED TO THEM  
02:07PM 18 INDIVIDUALLY, AND IN THOSE CASES THAT'S UNAUTHENTICATED DATA,  
02:07PM 19 AND GOOGLE GOES THROUGH GREAT LENGTHS TO KEEP THOSE SEPARATE,  
02:07PM 20 YOUR HONOR.

02:07PM 21 THE COURT: OKAY. ALL RIGHT. I KNOW THOSE ARE  
02:07PM 22 LOADED QUESTIONS. YOU CAN TELL WHERE THEY CAME FROM BECAUSE  
02:07PM 23 I'VE BEEN READING THE ARGUMENTS IN AND AROUND THE ISSUES WITH  
02:07PM 24 REGARD TO WHAT PLAINTIFFS' DATA IN THE RESPECTIVE CASES IS  
02:07PM 25 AVAILABLE FOR PRODUCTION.

02:08PM 1 SO LET'S TURN TO THAT ISSUE NOW. LET ME JUST CHECK MY  
02:08PM 2 NOTES AND BE SURE THAT I TOUCHED ON WHAT I WANTED. OKAY.  
02:08PM 3 THAT'S A GOOD START.

02:08PM 4 SO LET'S TURN -- GIVE ME ONE SECOND. SO LET'S TURN IN  
02:08PM 5 BROWN AND TAKE UP ISSUE P3, WHICH IS GOOGLE'S PRODUCTION OF  
02:08PM 6 PLAINTIFFS' DATA. AND OBVIOUSLY WE HAVE SPENT SOME TIME ON  
02:08PM 7 THIS ISSUE IN THE PAST, AND I DID REVIEW THE PARTIES'  
02:09PM 8 SUBMISSIONS AND DISCUSSIONS, AND I UNDERSTAND THE OBJECTIVE AND  
02:09PM 9 OBVIOUSLY THE OBJECTIVE OF THE LAWSUIT AND THE OBJECTIVE OF THE  
02:09PM 10 REQUEST.

02:09PM 11 FIRST, LET ME SAY I SEE P3 AND I SEE P6, P3 BEING THE DATA  
02:09PM 12 ASSOCIATED WITH PLAINTIFFS AND P6 BEING IDENTIFICATION OF CLASS  
02:09PM 13 MEMBERS, AND WE'VE SOMEWHAT CONFLATED THOSE IN THESE EARLY  
02:09PM 14 DISCUSSIONS, ALTHOUGH I AM MINDFUL OF THAT AND THAT THOSE MAY  
02:09PM 15 HAVE -- THERE MAY BE SOME DISTINCTIONS THERE THAT COME INTO  
02:09PM 16 PLAY.

02:10PM 17 I ALSO SEE THE GENERAL FRAMEWORK OF THE INQUIRY AS TO WHAT  
02:10PM 18 INFORMATION DOES GOOGLE HAVE AND WHAT HAS GOOGLE DONE WITH THAT  
02:10PM 19 INFORMATION? AND WITHIN THE -- LOOKING AT THE CLASS AS IT'S --  
02:10PM 20 PURPORTED CLASS AS IT'S DEFINED, WHAT INFORMATION ON THOSE --  
02:10PM 21 ON CLASS MEMBERS HAS GOOGLE COLLECTED OR TRACKED?

02:10PM 22 AND OBVIOUSLY IN MY ORDER FROM APRIL 30TH I ORDERED THE  
02:10PM 23 PRODUCTION OF THE AUTHENTICATED IDENTIFIERS, UNAUTHENTICATED  
02:10PM 24 IDENTIFIERS FOR INDIVIDUALS AND THEIR DEVICES, AND THEN THE  
02:10PM 25 NEED PERHAPS THERE FOR AN ADDITIONAL DEPOSITION. AND I SEE IN

02:10PM 1 YOUR CMC STATEMENT THAT YOU HAVE A DEPOSITION SET HERE IN THE  
02:10PM 2 NEXT COUPLE OF WEEKS, ON JUNE 16TH.

02:11PM 3 SO ONE QUESTION I HAVE IS HOW THAT RELATES TO THIS  
02:11PM 4 INQUIRY? IT LOOKS LIKE IT RELATES, BUT I'D LIKE TO UNDERSTAND  
02:11PM 5 THAT.

02:11PM 6 IT LOOKS LIKE FROM THE PARTIES' DISPUTE THAT, AND FROM THE  
02:11PM 7 SUMMARY, THAT GOOGLE'S POSITION, I THINK, ON, OKAY, NOW YOU  
02:11PM 8 HAVE TO PROVIDE FOR THE UNAUTHENTICATED IDENTIFIERS, YOU NEED  
02:11PM 9 TO CAPTURE THE COOKIES IN THE PRIVATE SESSIONS, AND THE PARTIES  
02:11PM 10 HAVE HAD BACK AND FORTH OVER THAT, BUT IT LOOKS LIKE THAT -- AT  
02:11PM 11 LEAST SOME OF THAT INFORMATION HAS BEEN PROVIDED, AND IT WASN'T  
02:11PM 12 CLEAR TO ME IF THAT WAS JUST PROVIDED AS TO ONE PLAINTIFF OR AS  
02:11PM 13 TO EACH OF THE NAMED PLAINTIFFS. THERE SEEMED TO BE SOME  
02:11PM 14 DISCREPANCY THERE.

02:11PM 15 SO WHAT INFORMATION THAT GOOGLE SAID IT NEEDED, THAT IS,  
02:12PM 16 THE NEW COOKIE INFORMATION -- AND THIS QUESTION IS TO BROWN,  
02:12PM 17 THE BROWN SIDE -- WHAT IN THAT REGARD AS OF TODAY HAS BEEN  
02:12PM 18 PROVIDED?

02:12PM 19 SO WHO HAS GOT THE MIKE ON THAT?

02:12PM 20 MR. MAO, THANK YOU.

02:12PM 21 MR. MAO: YES. THANK YOU, YOUR HONOR.

02:12PM 22 SO ON MAY 12TH, YOUR HONOR, THE DATE THE PRODUCTION WAS  
02:12PM 23 DUE, GOOGLE TOLD US TO GIVE THEM COOKIES, WHICH WE THEN ASKED  
02:12PM 24 WHAT EXACTLY ARE WE COLLECTING IN TERMS OF COOKIES?

02:12PM 25 THE COURT: I DID READ THE SUMMARY, MR. MAO.

02:12PM 1 MR. MAO: RIGHT. OKAY.

02:12PM 2 THE COURT: SO FAST FORWARD IN EACH OF THESE, AND  
02:12PM 3 LET ME GET US RIGHT TO THE POINT. WE HAVE A LOT OF GROUND TO  
02:12PM 4 COVER. SO WHAT HAVE YOU BEEN -- WHAT HAVE YOU PROVIDED, IF  
02:12PM 5 ANYTHING?

02:12PM 6 MR. MAO: THE THREE COOKIES THAT WERE SPECIFIED IN  
02:13PM 7 TERMS OF US BEING ABLE TO GENERATE THEM. WE DO NOT KNOW HOW TO  
02:13PM 8 GENERATE THEM, YOUR HONOR. WE TRIED OUR BEST TO GENERATE WHAT  
02:13PM 9 WE COULD.

02:13PM 10 THE COURT: OKAY.

02:13PM 11 MR. MAO: AND WE SENT THAT OVER FOR ALL PLAINTIFFS  
02:13PM 12 EXCEPT FOR ONE WHO WILL BE PROVIDING HERS THIS WEEK.

02:13PM 13 THE COURT: OKAY. SO FOR THE THREE IDENTIFIERS THAT  
02:13PM 14 GOOGLE ASKED FOR IS THAT -- WAS THAT --

02:13PM 15 MR. MAO: YES. NONE OF THEM WERE GOOGLE ANALYTIC  
02:13PM 16 COOKIES. THEY WERE ALL NON-GOOGLE ANALYTIC COOKIES. AND THEN  
02:13PM 17 WE SPECIFICALLY WERE ABLE TO CONSISTENTLY ONLY GENERATE TWO OF  
02:13PM 18 THEM, YOUR HONOR. THEY GAVE US THREE. AND WE ASKED FOR AN  
02:13PM 19 EXPLANATION AS TO --

02:13PM 20 THE COURT: I UNDERSTAND. I SAW THAT DISPUTE,  
02:13PM 21 MR. MAO. THANK YOU. OKAY.

02:13PM 22 SO THREE IDENTIFIERS WERE PROVIDED TO YOU BY GOOGLE. AND  
02:13PM 23 YOU DID WHAT YOU COULD WITH THOSE AND YOU GOT THAT DATA BACK TO  
02:13PM 24 GOOGLE; IS THAT CORRECT?

02:13PM 25 MR. MAO: YES, YOUR HONOR. AND, YOUR HONOR, WE MAY

02:13PM 1 HAVE HAD ONE OR TWO PLAINTIFFS THAT WERE ABLE TO RANDOMLY  
02:14PM 2 GENERATE THE THIRD COOKIE, I'M NOT SURE. BUT I KNOW TWO OF THE  
02:14PM 3 THREE WE WERE ABLE TO FIGURE OUT HOW TO GENERATE THEM.

02:14PM 4 THE COURT: OKAY. AND THEN FOR ALL OF THE -- FOR  
02:14PM 5 ALL BUT ONE OF THE PLAINTIFFS; IS THAT RIGHT?

02:14PM 6 MR. MAO: YES. THE MOST RECENTLY ADDED PLAINTIFF  
02:14PM 7 WHO NEEDED A LITTLE TIME BECAUSE SHE WAS ON VACATION.

02:14PM 8 THE COURT: OKAY. GOOD. AND THAT INFORMATION HAS  
02:14PM 9 BEEN PROVIDED TO GOOGLE; IS THAT RIGHT?

02:14PM 10 MR. MAO: YES.

02:14PM 11 THE COURT: AND WHEN WAS THAT PROVIDED, MR. MAO?

02:14PM 12 MR. MAO: I THINK WITHIN DAYS OF MAY 24TH, WHICH IS  
02:14PM 13 WHEN THEY GAVE THE EXPLANATION ON THE THREE COOKIES.

02:14PM 14 THE COURT: OKAY. SO --

02:14PM 15 MR. MAO: I THINK IT WAS ROLLING LAST WEEK.

02:14PM 16 THE COURT: OKAY. THANK YOU.

02:14PM 17 ALL RIGHT. SO -- NOW TO GOOGLE THEN. SO THE INFORMATION  
02:14PM 18 THAT YOU'VE RECEIVED, THAT'S WHAT YOU SAID YOU NEEDED TO QUERY  
02:14PM 19 UNAUTHENTICATED DATA AND NOW THAT HAS BEEN RECEIVED AND YOU'RE  
02:14PM 20 RUNNING THOSE QUERIES; IS THAT CORRECT?

02:15PM 21 MR. SCHAPIRO: CORRECT, YOUR HONOR. I THINK WE GOT  
02:15PM 22 THE FIRST SET MAY 25TH, AND I AGREE WITH MR. MAO, SOME MORE OF  
02:15PM 23 IT HAS COME IN OVER THE LAST WEEK. I BELIEVE THERE MAY BE ONE  
02:15PM 24 OR TWO PLAINTIFFS FOR WHOM --

02:15PM 25 THE COURT: OKAY.

02:15PM 1 MR. SCHAPIRO: -- ONE OR TWO PLAINTIFFS FOR WHOM  
02:15PM 2 WE'RE STILL WAITING, BUT WE HAVE PRODUCED INFORMATION, AND  
02:15PM 3 WE'RE RUNNING THOSE QUERIES.

02:15PM 4 THE COURT: OKAY. HAVE YOU PRODUCED RESULTS OF  
02:15PM 5 THOSE QUERIES?

02:15PM 6 MR. SCHAPIRO: WE'VE PROVIDED RESULTS OF THE  
02:15PM 7 AUTHENTICATED IDENTIFIERS, AND WE ARE RUNNING THE QUERIES NOW  
02:15PM 8 WHICH TAKES A FEW STEPS FOR THE UNAUTHENTICATED, AND -- BUT WE  
02:15PM 9 SHOULD BE ABLE TO DO THAT SHORT SHORTLY.

02:15PM 10 THE COURT: RIGHT.

02:15PM 11 MR. SCHAPIRO: SO WE'RE GATHERING THE DOCUMENTS THAT  
02:15PM 12 ARE RELEVANT TO THIS RFP, AND SO WE DON'T THINK THERE'S A  
02:15PM 13 DISPUTE HERE. THERE IS, AS YOU NOTED, A 30(B)(6) COMING UP, SO  
02:15PM 14 IF THEY HAVE SOME QUESTIONS ABOUT HOW THEY'RE GENERATED, THEY  
02:15PM 15 CAN ASK AT THE 30(B)(6).

02:15PM 16 I'LL NOTE THAT THE CALHOUN PLAINTIFFS, I BELIEVE, MANAGED  
02:15PM 17 TO GET US THAT DATA PRETTY READILY AND PRETTY QUICKLY.

02:16PM 18 THE COURT: WELL, SO I WANT TO BE SURE THAT WE'RE --  
02:16PM 19 I MEAN, WE WERE ONLY -- WE'RE REALLY FOCUSED ON THE  
02:16PM 20 IDENTIFIERS FOR UNAUTHENTICATED DATA, AND THAT'S REALLY WHAT  
02:16PM 21 THIS IS ABOUT.

02:16PM 22 MR. SCHAPIRO: YES.

02:16PM 23 THE COURT: YOU'VE GOTTEN A GREAT DEAL OF THAT  
02:16PM 24 INFORMATION, IF NOT ALL OF IT, FROM THE PLAINTIFFS. AND SO  
02:16PM 25 WHEN WILL YOU BE MAKING THAT PRODUCTION TO THE PLAINTIFFS? AND

02:16PM 1 I'VE GOT AN EYE ON THE DEPO DATES AS WELL.

02:16PM 2 MR. SCHAPIRO: YES. LET ME INVITE ONE OF MY  
02:16PM 3 COLLEAGUES WHO IS CLOSER TO THE TIMING TO WEIGH IN.

02:16PM 4 MR. ANSORGE: YES, YOUR HONOR, I'LL TAKE THIS  
02:16PM 5 BRIEFLY.

02:16PM 6 JOSEF ANSORGE. WE WOULD EXPECT -- WHAT WE ARE HOPING TO  
02:16PM 7 DO ONCE WE GET THE LAST BIT IS RUN THEM ALL TOGETHER BECAUSE IT  
02:16PM 8 SAVES QUITE A LOT OF TIME AND RESOURCES TO QUERY THE DATA FOR  
02:16PM 9 UNIDENTIFIERS TAKES AS LONG TO QUERY FOR ONE IDENTIFIER. SO  
02:16PM 10 WHAT WE WOULD LIKE TO DO, IF WE RECEIVE IT IN A TIMELY MANNER,  
02:16PM 11 WHAT WE WOULD AIM TO PRODUCE IS SOMETHING LIKE A WEEK BEFORE  
02:16PM 12 THE SCHEDULED 30(B)(6) DEPOSITION ON THE 16TH.

02:17PM 13 THE COURT: WELL, THAT WOULD MEAN THAT YOU WOULD  
02:17PM 14 PRODUCE IT BY THE 9TH. AND HOW LONG DOES IT TAKE -- HOW MUCH  
02:17PM 15 TIME DO YOU NEED TO RUN SEARCHES? I MEAN, IS THIS A MATTER OF  
02:17PM 16 HOURS OR A MATTER OF DAYS OR --

02:17PM 17 MR. ANSORGE: I EXPECT IT WILL BE A MATTER OF HOURS  
02:17PM 18 BECAUSE ONE OF THE FACTORS ABOUT THESE TYPES OF IDENTIFIERS IS  
02:17PM 19 THAT THEY'RE GENERATED ANEW FOR EACH PRIVATE BROWSING SESSION,  
02:17PM 20 SO WE DON'T ACTUALLY HAVE TO SEARCH DATA FROM 2017 OR ANYTHING  
02:17PM 21 LIKE THAT. YOU KNOW, WE EXPECT IT TO BE LIMITED IN TIME AND  
02:17PM 22 FOCUS ON THE PRIVATE BROWSING SESSION.

02:17PM 23 THE COURT: ALL RIGHT. WELL, THEN I WANT ALL OF  
02:17PM 24 THE, EXCUSE ME, THE DATA, ALL OF THE UNAUTHENTICATED DATA THAT  
02:18PM 25 IS ASSOCIATED FROM THIS SEARCH BY THESE IDENTIFIERS, ALL OF

02:18PM 1 THAT IS TO BE PRODUCED NO LATER THAN THE 9TH, JUNE 9TH, A WEEK  
02:18PM 2 BEFORE THE DEPOSITION. AND I WANT THAT TO BE A ROLLING  
02:18PM 3 PRODUCTION.

02:18PM 4 SO WHAT IS THE TIMING ON GETTING THE LAST PLAINTIFFS'  
02:18PM 5 INFORMATION OVER TO GOOGLE?

02:18PM 6 MR. SCHAPIRO: I THINK THAT'S A QUESTION FOR MR. MAO  
02:18PM 7 OR SOMEONE ON HIS SIDE.

02:18PM 8 THE COURT: YES.

02:18PM 9 MR. MAO: WE PRODUCED ALL OF THEM THAT WERE  
02:18PM 10 SPECIFIED, YOUR HONOR, EXCEPT FOR --

02:18PM 11 THE COURT: I THOUGHT YOU HAVE ONE PLAINTIFF THAT IS  
02:18PM 12 HANGING OUT THERE.

02:18PM 13 MR. MAO: YEAH. OUR AGREEMENT WAS TO HAVE HER SEND  
02:18PM 14 HERS BY THIS FRIDAY, I BELIEVE.

02:18PM 15 THE COURT: OKAY. ALL RIGHT. GOOD.

02:18PM 16 ALL RIGHT. THEN THAT INFORMATION WILL BE RUN AND THAT  
02:19PM 17 WILL BE PROVIDED IN ADVANCE OF THE DEPOSITION.

02:19PM 18 THEN THAT BRINGS US -- THAT WAS SORT OF SUB ISSUE (A), IF  
02:19PM 19 YOU WILL, ON .3, WHICH IS GETTING THAT DATA IN THE HANDS OF THE  
02:19PM 20 PLAINTIFFS.

02:19PM 21 AND THEN THE LARGER REQUEST THAT CAME UP WITH REGARDS TO  
02:19PM 22 THE USE OF A CLEAN ROOM OR SOME WAY TO EXPLORE AND TEST FROM  
02:19PM 23 THE PLAINTIFFS THEIR CHALLENGES TO GOOGLE'S POSITION AROUND  
02:19PM 24 THE -- AROUND WHAT THE SYSTEMS CAN AND CANNOT DO.

02:19PM 25 NOW, JUST TO BE SURE I UNDERSTAND THE ISSUE, AND LET ME



02:19PM 1 TELL YOU RIGHT AT THE OUTSET, I THINK THIS IS AN ISSUE THAT THE  
02:19PM 2 PARTIES -- WELL, CLEARLY THERE NEEDS TO BE AN UNDERSTANDING,  
02:19PM 3 AND I'M GOING TO SEND THE PARTIES TO MEET AND CONFER A LITTLE  
02:20PM 4 BIT FURTHER, BUT THERE WILL BE -- SOMETHING WILL COME OF THIS.

02:20PM 5 SO LET ME DO IT THIS WAY. I SEE IN THE SUMMARY GOOGLE'S  
02:20PM 6 STATEMENTS THAT GOOGLE SYSTEMS ARE NOT DESIGNED TO DERIVE  
02:20PM 7 UNAUTHENTICATED IDENTIFIERS FROM AUTHENTICATED IDENTIFIERS AND  
02:20PM 8 THAT TO SEARCH FOR UNAUTHENTICATED DATA, GOOGLE NEEDS AN  
02:20PM 9 AUTHENTICATED IDENTIFIERS.

02:20PM 10 MY -- A QUESTION I HAVE -- I TAKE IT THAT THAT STATEMENT,  
02:20PM 11 THE PLAINTIFFS -- WELL, MY QUESTION IS DO YOU HAVE ENOUGH  
02:20PM 12 INFORMATION TO AGREE OR DISAGREE WITH THAT STATEMENT OR IS  
02:20PM 13 THAT -- DO YOU WANT TO TEST THAT?

02:21PM 14 MR. MAO?

02:21PM 15 MR. MAO: YOUR HONOR, WE DISAGREE WITH THAT  
02:21PM 16 STATEMENT. I ACTUALLY HAD PREPARED SIX SLIDES WHICH REALLY  
02:21PM 17 PRIMARILY CONSIST OF TWO EXHIBITS THAT WERE PRODUCED IN THE  
02:21PM 18 CASE THAT SHOW THAT GOOGLE, FOR EXAMPLE, [REDACTED]  
02:21PM 19 [REDACTED]  
02:21PM 20 [REDACTED] WE MET AND  
02:21PM 21 CONFERRED, AND WE ASKED COUNSEL TO DO THAT PRODUCTION, AND THEY  
02:21PM 22 REFUSED.

02:21PM 23 THE COURT: OKAY. SO -- AND I SAW THAT INFORMATION  
02:21PM 24 AND ARGUMENT IN THE PAPERS. OBVIOUSLY THIS IS A POINT OF  
02:21PM 25 CONTENTION.

02:21PM 1 AND PLAINTIFFS, I THINK IT IS APPROPRIATE FOR PLAINTIFFS  
02:21PM 2 TO BE ABLE TO TEST THAT STATEMENT AND THAT POSITION IN SOME  
02:21PM 3 FASHION, WHETHER IT IS FLAT OUT THE CLEAN ROOM PROPOSAL OR  
02:22PM 4 SOMETHING ELSE, SOME OTHER FORM OF ACCESS, BUT THERE NEEDS TO  
02:22PM 5 BE SOME WAY FOR THE PLAINTIFFS TO UNDERSTAND AND TO TEST OR  
02:22PM 6 CHALLENGE WHETHER OR NOT THE UNAUTHENTICATED IDENTIFIERS CAN BE  
02:22PM 7 DERIVED FROM THE AUTHENTICATED IDENTIFIERS.

02:22PM 8 MR. SCHAPIRO: YOUR HONOR --

02:22PM 9 THE COURT: MR. SCHAPIRO.

02:22PM 10 MR. SCHAPIRO: -- MAY I PROPOSE OR SUBMIT THAT IN  
02:22PM 11 THE FIRST INSTANCE THE WAY TO TEST THAT IS BY ASKING SOMEONE  
02:22PM 12 QUESTIONS UNDER OATH BECAUSE IN AN ORDINARY --

02:22PM 13 THE COURT: ISN'T THAT WHAT THE CURRENTLY 30(B)(6)  
02:22PM 14 GOES TO?

02:22PM 15 MR. SCHAPIRO: YES, THAT'S ONE OF THE TOPICS.  
02:22PM 16 RESPECTFULLY, IT CAN'T BE THE CASE THAT A PLAINTIFF CAN JUST  
02:23PM 17 SAY, WELL, IT SEEMS TO US THAT YOU CAN DO X, Y, AND Z, AND  
02:23PM 18 REPRESENT IN SWORN ANSWERS TO INTERROGATORIES AND IN SWORN  
02:23PM 19 TESTIMONY THAT THEIR UNDERSTANDING IS INCORRECT AND THAT THEY  
02:23PM 20 CAN THEN GO AND SAY, WELL, WE WANT TO HAVE ACCESS TO ALL OF  
02:23PM 21 YOUR SYSTEMS, AT LEAST NOT IN THE FIRST INSTANCE. THAT'S OUR  
02:23PM 22 POSITION.

02:23PM 23 THE COURT: I TAKE THAT. REALLY MY QUESTION WAS IF  
02:23PM 24 THE 30(B)(6) THAT IS COMING UP, WE'RE GETTING THIS PRODUCTION  
02:23PM 25 OF DOCUMENTS, THE 30(B)(6) DEPOSITION IS COMING UP, THAT THAT

02:23PM 1 WOULD INFORM BOTH SIDES, AND FROM THAT BOTH SIDES WOULD BE IN A  
02:23PM 2 BETTER POSITION, ONE, TO FIRST TRY TO NEGOTIATE AGAINST WHETHER  
02:23PM 3 IT'S SOME FORM OF ACCESS AND IF THE PARTIES CAN'T AGREE, THEN  
02:23PM 4 THERE WILL BE MORE INFORMATION FOR ME TO MAKE THAT DECISION.

02:23PM 5 MR. MAO.

02:23PM 6 MR. MAO: YES. SORRY, YOUR HONOR. SO JUST REAL  
02:23PM 7 FAST.

02:23PM 8 OUR UNDERSTANDING, AND IT DOES NOT SEEM LIKE GOOGLE  
02:24PM 9 DISPUTES THIS, IS THAT THE TWICE-BAKED COOKIES CONTAINED  
02:24PM 10 IDENTIFIERS [REDACTED]  
02:24PM 11 THAT'S ONE OF THE REASONS, YOUR HONOR, THAT WE'RE ASKING ABOUT  
02:24PM 12 HOW THIS IS GENERATED BECAUSE WE'RE TRYING TO FIGURE OUT WHAT  
02:24PM 13 THE INGREDIENTS OF THAT ARE. FOR EXAMPLE, DOES THAT INCLUDE IP  
02:24PM 14 ADDRESS OR DEVICE I.D., RIGHT?

02:24PM 15 AND THE REASON WHY I MENTION THAT, YOUR HONOR, IS BECAUSE  
02:24PM 16 THAT IS NOT ONLY RELEVANT FOR THE DOCUMENT PRODUCTION, BUT THAT  
02:24PM 17 IS RELEVANT IN ORDER FOR US TO BE ABLE TO TEST OUR THEORY  
02:24PM 18 BECAUSE IF YOU'RE TRACKING PEOPLE LOGGED OUT AND YOU'RE ABLE TO  
02:24PM 19 CONSISTENTLY DO THAT ACROSS SESSIONS AND ACROSS DEVICES, SURELY  
02:24PM 20 THERE MUST BE STABLE SEEDS THAT GO INTO AN ALGORITHM OR SOME  
02:24PM 21 TYPE OF HASHING MECHANISM BY WHICH YOU IDENTIFY DEVICES, WHICH  
02:24PM 22 NOBODY DISPUTES THAT GOOGLE IS PEGGING ALL OF THEIR DATA BY.

02:25PM 23 [REDACTED]

02:25PM 24 [REDACTED]

02:25PM 25 [REDACTED]

02:25PM 1 THE COURT: I APPRECIATE THAT. BUT, AGAIN, A MORE  
02:25PM 2 DETAILED ARGUMENT ON THE ACCESS POINT OR THE CLEAN ROOM POINT  
02:25PM 3 IS PREMATURE BECAUSE I WANT TO -- WE'VE HAD THIS PRODUCTION NOW  
02:25PM 4 AND THEN THERE'S A 30(B)(6) COMING UP ON THIS AND RELATED  
02:25PM 5 TOPICS, AND IT MAY BE APPROPRIATE, BUT I WANT THE PARTIES TO  
02:25PM 6 GET THROUGH THAT PROCESS. I WANT A ROBUST MEET AND CONFER, AND  
02:25PM 7 I THINK THERE NEEDS TO BE, AGAIN, AN ISSUE THAT COMES UP HERE,  
02:25PM 8 AS SAID IN THE PAPERS ALSO, IS, OF COURSE, ALL OF THE  
02:26PM 9 INFORMATION ABOUT THE DATABASES AND WHAT IS AND ISN'T TRACKED,  
02:26PM 10 AND IS AND ISN'T ABLE TO LINK UP GOOGLE KNOWS AND PLAINTIFFS  
02:26PM 11 DON'T KNOW. THAT'S OBVIOUSLY TO A CERTAIN EXTENT WHAT  
02:26PM 12 DISCOVERY IS FOR.

02:26PM 13 BUT IT IS NOT CART BLANCHE TO ALL OF GOOGLE'S SYSTEMS. SO  
02:26PM 14 WE'RE TRYING TO NAVIGATE THIS IN A FAIR AND REASONABLE WAY, AND  
02:26PM 15 IT'S TIED BACK, AND IT WILL CONTINUE TO TIE BACK TO THE PROPER  
02:26PM 16 DEFINITIONS OF THE CLASS.

02:26PM 17 SO WE'VE MADE PROGRESS, BUT WE'RE CONTINUING TO MAKE  
02:26PM 18 PROGRESS. I'M GLAD WE GOT THE UNAUTHENTICATED IDENTIFIERS  
02:26PM 19 SITUATION WORKED OUT, THAT'S GOOD, OR AT LEAST ADDRESSED AT  
02:26PM 20 THIS PHASE. THAT INFORMATION HAS BEEN PRODUCED, THOSE SEARCHES  
02:26PM 21 ARE BEING RUN, LET'S GET THE 30(B)(6), AND THEN I WANT THE  
02:27PM 22 PARTIES TO MEET AND CONFER, AND I'LL TAKE FURTHER STATEMENT ON  
02:27PM 23 THAT, AND I'LL LAY THAT OUT IN AN ORDER IN DUE COURSE. OKAY?

02:27PM 24 ALL RIGHT. SO THAT'S ACCESS TO PLAINTIFFS' DATA IN BROWN.  
02:27PM 25 AND I WANT TO TURN TO ACCESS TO PLAINTIFFS' DATA IN CALHOUN.

02:27PM 1 LET ME JUST MAKE A NOTE HERE BEFORE I DO THAT.

02:28PM 2 LET ME SHIFT FILES AND GET DIFFERENT PAPER HERE AND LET'S  
02:28PM 3 JUST TURN TO CALHOUN AND ISSUE 1.3 WHICH RELATES TO RFP 5, FOR  
02:28PM 4 DOCUMENTS AND INFORMATION ASSOCIATED WITH PLAINTIFFS AND THEIR  
02:28PM 5 IDENTIFIERS.

02:28PM 6 AND WHO HAS GOT CALHOUN? MR. BARNES, IS THAT YOU?

02:28PM 7 MR. BARNES: YES, YOUR HONOR.

02:28PM 8 THE COURT: OKAY. WHY DON'T YOU GO AHEAD.

02:28PM 9 OBVIOUSLY, I'VE READ THROUGH THE SUMMARY AND YOU'VE WALKED ME  
02:29PM 10 THROUGH. YOU UNDERSTAND SOME OF MY QUESTIONS AROUND THE SCOPE  
02:29PM 11 AND DEFINITIONS. SO WHAT IS THE ISSUE?

02:29PM 12 MR. BARNES: RIGHT. I THINK THERE ARE TWO ISSUES  
02:29PM 13 HERE. ONE IS THE DEVICE DATA THAT PLAINTIFFS -- WHERE  
02:29PM 14 PLAINTIFFS DIDN'T DIRECTLY IDENTIFY THE COOKIE, AND THE SECOND  
02:29PM 15 ISSUE IS WHAT WE SEE AS AN IMPROPER ATTEMPT TO CARVE OUT A  
02:29PM 16 SUBSET OF PLAINTIFF DATA.

02:29PM 17 YOU SPENT A LOT OF TIME IN BROWN TALKING ABOUT THE DEVICE  
02:29PM 18 DATA BASED ON IDENTIFIERS THAT PLAINTIFFS HAD NOT YET PROVIDED  
02:29PM 19 TO GOOGLE.

02:29PM 20 I JUST -- I THINK THERE'S A LITTLE BIT OF A DISCONNECT  
02:29PM 21 HERE BECAUSE IN OUR CASE GOOGLE HAS NEVER SAID THAT THEY CANNOT  
02:29PM 22 GET THIS DATA.

02:29PM 23 WHAT THEY HAVE SAID IS THAT THERE IS A [REDACTED]

02:29PM 24 [REDACTED]

02:30PM 25 [REDACTED]

02:30PM 1

02:30PM 2

02:30PM 3

02:30PM 4

02:30PM 5

02:30PM 6

02:30PM 7

02:30PM 8

02:30PM 9

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02:31PM 21

02:31PM 22

02:31PM 23

02:31PM 24

02:31PM 25

[REDACTED]

AND GOOGLE MAINTAINS AN IDENTITY CONTAINER FOR EACH USER THAT CONTAINS THEIR EMAIL ADDRESS, THEIR REAL NAME, THEIR PHONE NUMBER, AND BASICALLY PERSONALLY IDENTIFIES THEM AS WELL AS THE DEVICES ASSOCIATED WITH THEIR ACCOUNT.

AND GOOGLE [REDACTED] AND GAIA.

ANOTHER QUOTE FROM A DOCUMENT IS, [REDACTED]

[REDACTED]

SO, YOU KNOW, ONE WAY IS TO GIVE US A CLEAN ROOM, BUT WE THINK THIS IS JUST THE TIP OF THE ICEBERG OF THE DOCUMENTS THAT WE HAVE THAT SHOW THAT GOOGLE HAS THE ABILITY TO DO THIS. IT'S JUST A MATTER OF THEM [REDACTED] AND THE REASON FOR THAT IS THAT THEY HAD A TYPICAL GOOGLER AT ONE POINT IN TIME WHO DID IT, AND IT WAS A BIG PROBLEM, SO THEY CUT OFF FULL ACCESS.

[REDACTED]

AND IN ADDITION TO WHAT MR. MAO SAID, MR. MAO IDENTIFIED THREE COOKIES: [REDACTED] GAIA, AND [REDACTED] BUT THERE ARE AT LEAST [REDACTED] THAT WE HAVE SEEN IN THE DOCUMENTS PRODUCED TO US: [REDACTED]

THE COURT: OKAY. OKAY.

02:31PM 1 MR. BARNES: GOOGLE WON'T PRODUCE THESE DOCUMENTS TO  
02:31PM 2 US, YOUR HONOR. SO WE HAVE DOCUMENTS THAT SHOW THAT THEY CAN  
02:31PM 3 DO THIS. THEY NEVER SAID THAT THEY CAN'T. [REDACTED]

02:32PM 4 [REDACTED]  
02:32PM 5 [REDACTED]

02:32PM 6 THE COURT: ALL RIGHT. SO FROM MY ORDER BACK ON  
02:32PM 7 APRIL 30TH IT WAS FAIRLY COMPREHENSIVE ON THIS POINT TO PRODUCE  
02:32PM 8 THE DATA, INCLUDING ANY DEVICE DATA ASSOCIATED WITH ANY  
02:32PM 9 PLAINTIFF. WHOOPS. SORRY ABOUT THAT.

02:32PM 10 I APOLOGIZE. THAT'S WHAT HAPPENED. I HAVE TOO MANY  
02:32PM 11 PAPERS ON MY DESK.

02:32PM 12 (PAUSE IN PROCEEDINGS.)

02:32PM 13 THE COURT: SO THAT WAS THE DIRECTION, AND I  
02:32PM 14 UNDERSTAND FROM THE DISPUTE THAT THERE'S CONCERN AROUND WHAT  
02:33PM 15 HAS OR WHAT HAS BEEN LEFT OUT.

02:33PM 16 YOU STARTED TO SAY THAT THERE WERE TWO ISSUES HERE,  
02:33PM 17 MR. BARNES, AND --

02:33PM 18 MR. BARNES: RIGHT. SO THE FIRST IS THAT  
02:33PM 19 PLAINTIFFS' DEVICE DATA. SO WE'VE PROVIDED VARIOUS COOKIE  
02:33PM 20 IDENTIFIERS TO GOOGLE. THEY NEVER TOLD US WHICH SPECIFIC  
02:33PM 21 COOKIES TO PRODUCE. WE PROVIDED ALL OF THE COOKIES WE COULD  
02:33PM 22 FIGURE OUT.

02:33PM 23 I THINK WHAT GOOGLE'S POSITION IS THAT, OKAY, WE'LL TAKE  
02:33PM 24 THOSE COOKIES, AND WE WILL IDENTIFY ANYTHING ASSOCIATED WITH  
02:33PM 25 THE DEVICE, ASSOCIATED WITH THOSE COOKIES.

02:33PM 1 WHAT WE ARE SAYING IS THAT THERE ARE DOCUMENTS THAT SHOW,  
02:33PM 2 AND GOOGLE HAS NEVER SAID THAT THEY CAN'T DO THIS, THEY'VE ONLY  
02:33PM 3 SAID THAT THERE'S A --

02:33PM 4 THE COURT: I UNDERSTAND.

02:33PM 5 MR. BARNES: -- IS THAT WE CAN'T IDENTIFY EVERY  
02:33PM 6 COOKIE EVER ASSOCIATED WITH THE PLAINTIFFS' DEVICE THAT GOOGLE  
02:33PM 7 HAS ASSOCIATED WITH THE PLAINTIFFS' ACCOUNT AND THE PLAINTIFFS'  
02:33PM 8 DEVICE.

02:33PM 9 THAT IS IN GOOGLE'S SOLE POSSESSION, AND THERE'S NO WAY  
02:33PM 10 FOR US TO COME UP WITH THAT DATA.

02:33PM 11 BUT GOOGLE HAS THE ABILITY TO DO IT. THAT WAS -- THAT'S  
02:34PM 12 THE POINT OF UNITING THOSE SPACES.

02:34PM 13 THE COURT: WHY DO YOU NEED ALL OF THE COOKIE DATA?

02:34PM 14 MR. BARNES: WE NEED ALL OF THE DATA TO FIGURE OUT  
02:34PM 15 ALL OF THE DATA THAT GOOGLE IS COLLECTING FROM OUR USERS WHEN  
02:34PM 16 THEY'RE NOT IN A SYNCED STATE BECAUSE THERE MAY BE SOME  
02:34PM 17 IDENTIFIERS THAT WE ARE UNABLE TO CATCH ON OUR END THAT GOOGLE  
02:34PM 18 KNOWS ABOUT AND CAN SAY, OH, BECAUSE WE KNOW GAIA USER ONE USES  
02:34PM 19 THIS DEVICE, THESE ARE THE COOKIES ASSOCIATED WITH THIS DEVICE,  
02:34PM 20 THIS IS THE DATA WE HAVE ON THIS DEVICE, WHICH WE KNOW THIS  
02:34PM 21 GAIA USER USES.

02:34PM 22 THERE'S NO WAY THAT WE'RE GOING TO EVER BE ABLE TO COME UP  
02:34PM 23 WITH ALL OF THE IDENTIFIERS ASSOCIATED WITH THAT DEVICE.  
02:34PM 24 GOOGLE HAS A BUNDLE OF THEM AND IDENTIFIERS THAT WE DON'T EVEN  
02:34PM 25 KNOW ABOUT BECAUSE WE'RE JUST GETTING INTO DISCOVERY NOW.



02:35PM 1 SO GETTING THAT INFORMATION NOT ONLY AFFECTS THE NAMED  
02:35PM 2 PLAINTIFFS, BUT IT ALSO AFFECTS WHAT HAPPENS IN THE 30(B) (6)  
02:35PM 3 AND THIS DISPUTE THAT WE HAVE OVER WHAT NEEDS TO BE PRESERVED  
02:35PM 4 AND WHAT DOESN'T NEED TO BE PRESERVED BECAUSE IN ORDER TO DO  
02:35PM 5 THAT, WE HAVE TO HAVE A SAMPLE SET OF DATA FROM WHICH OUR  
02:35PM 6 EXPERTS CAN LOOK AT AND SAY, OKAY, AND WE CAN LOOK AT AND SAY,  
02:35PM 7 OKAY, NOW WE KNOW WHERE IT IS ALL GOING, AND WHAT IS THE BEST  
02:35PM 8 PLAN THAT MAKES SENSE FOR THE PARTIES IN THIS CASE?

02:35PM 9 BUT WITHOUT GOOGLE DOING THAT, WE'RE LEFT IN THE DARK.  
02:35PM 10 AND ONLY GOOGLE CAN DO THAT.

02:35PM 11 SO THE SECOND ISSUE, YOUR HONOR --

02:35PM 12 THE COURT: NO, NO, NO. LET'S NOT LEAVE THE FIRST  
02:35PM 13 ISSUE, WHICH IS -- BECAUSE I'M NOT SURE THAT I GOT AN ANSWER TO  
02:35PM 14 MY QUESTION -- WHICH IS, OKAY, IF THERE ARE 100 DIFFERENT KINDS  
02:35PM 15 OF COOKIES THAT IDENTIFY DEVICES, RIGHT, AGAIN, WHY DO YOU  
02:35PM 16 NEED -- YOU KNOW, THE PLAINTIFFS, YOU'RE SAYING, LOOK, WHEN I  
02:36PM 17 GO IN AND I'M BROWSING, I'M NOT SYNCED, AND I'M ON CHROME, AND  
02:36PM 18 I'M DOING WHAT I DO, AND GOOGLE WAS SURREPTITIOUSLY COLLECTING  
02:36PM 19 MY PERSONAL INFORMATION, RIGHT? I MEAN, IN VERY BROAD BRUSH  
02:36PM 20 STROKES.

02:36PM 21 SO WHY DO -- I'M TRYING TO -- WHAT IS THE RELEVANCE OF ALL  
02:36PM 22 OF THE DEVICE IDENTIFIERS?

02:36PM 23 MR. BARNES: THAT'S A GOOD --

02:36PM 24 THE COURT: YOU WANT PLAINTIFF INFORMATION. WHAT  
02:36PM 25 YOU WANT TO KNOW IS WHAT INFORMATION DID YOU COLLECT FROM

02:36PM 1 PEOPLE WHO WERE NOT SYNCED AND WERE USING CHROME, WHAT DATA WAS  
02:36PM 2 BEING COLLECTED, RIGHT? THAT'S -- WAS DATA BEING COLLECTED,  
02:36PM 3 AND, IF SO, WHAT DATA?

02:36PM 4 SO WHAT IS THE -- WHY DO YOU NEED ALL OF THE COOKIE  
02:36PM 5 IDENTIFIERS?

02:36PM 6 MR. BARNES: AND FOR OUR NAMED PLAINTIFFS WE WANT TO  
02:37PM 7 KNOW WHAT SPECIFIC DATA GOOGLE COLLECTED, NOT JUST THE GENERAL,  
02:37PM 8 BUT THE SPECIFIC TO OUR PLAINTIFFS.

02:37PM 9 SO THE REASON WE NEED ALL OF THE COOKIE IDENTIFIERS AND  
02:37PM 10 ALL OF THE DATA ASSOCIATED WITH ALL OF THE COOKIE IDENTIFIERS,  
02:37PM 11 AND THERE ARE ALSO DIFFERENT IDENTIFIERS THAT AREN'T COOKIES.  
02:37PM 12 SO I WANT TO BE CLEAR AND NOT LIMIT THE COOKIES, IS THAT THERE  
02:37PM 13 ARE DIFFERENT COOKIES AND DIFFERENT DEVICES THAT POP -- DEVICE  
02:37PM 14 IDENTIFIERS THAT POP UP ON DIFFERENT WEB PROPERTIES AT  
02:37PM 15 DIFFERENT POINTS IN TIME.

02:37PM 16 SO COOKIE ONE, TWO, THREE, FOUR, GOOGLE MAY BE USING TO  
02:37PM 17 TRACK JANE DOE IN THE MONTH OF JANUARY, BUT SOMETHING HAPPENS  
02:37PM 18 AND NOW IN THE MONTH OF FEBRUARY IN ADDITION TO TRACKING WITH  
02:37PM 19 GOOGLE ONE, TWO, THREE, FOUR ON THIS SUBSET OF WEB PROPERTIES  
02:37PM 20 GOOGLE IS TRACKING JANE DOE AND HER DEVICES WITH COOKIE FIVE,  
02:37PM 21 SIX, SEVEN, EIGHT.

02:37PM 22 NOW, WE HAVE IDENTIFIED FOR GOOGLE THE COOKIES WE KNOW,  
02:38PM 23 THE DEVICE IDENTIFIERS THAT WE WERE ABLE TO CATCH. SO THAT  
02:38PM 24 WOULD BE THE EQUIVALENT OF US SAYING, OKAY, WE KNOW IN JANUARY  
02:38PM 25 THAT THE COOKIES WERE ONE, TWO, THREE, FOUR.

02:38PM 1 BUT, YOUR HONOR, WE CAN'T KNOW WHAT HAPPENED IN FEBRUARY.

02:38PM 2 THE BETTER EXAMPLE IS FOR OUR STUFF IS I THINK WE MADE THE  
02:38PM 3 RECORDINGS IN JULY. SO WE CAN'T STATE WITH CERTAINTY WHAT THE  
02:38PM 4 IDENTIFIERS AND DATA GOOGLE WAS COLLECTING IN JUNE.

02:38PM 5 NOW, THEY MAY GIVE US A SUBSET OF THAT BASED ON OVERLAP  
02:38PM 6 WITH THE IDENTIFIERS THAT WE GAVE THEM FOR JULY, BUT WE DON'T  
02:38PM 7 KNOW THAT IT'S EVERYTHING.

02:38PM 8 BUT GOOGLE CAN FIGURE OUT THAT IT'S EVERYTHING BECAUSE  
02:38PM 9 GOOGLE MAKES THOSE CONNECTIONS, PUTS IN THE IDENTITY SPACE ALL  
02:38PM 10 OF THE DEVICES THAT ARE ASSOCIATED WITH THE USER'S GAIA  
02:38PM 11 ACCOUNT. SO GOOGLE HAS THE CAPABILITY TO DO THIS. AND TO MY  
02:38PM 12 KNOWLEDGE, THEY NEVER SAID THAT THEY CAN'T.

02:38PM 13 THE COURT: SO IF I'M UNDERSTANDING YOUR ANSWER TO  
02:39PM 14 MY QUESTION IT'S IF YOU HAVE PLAINTIFF JANE DOE AND SHE HAS A  
02:39PM 15 DEVICE, OBVIOUSLY SHE'S ON HER PHONE, SHE GOES TO X, Y, Z WEB  
02:39PM 16 PROPERTIES, AND THOSE ARE TRACKED BY COOKIES, SO GOOGLE KNOWS  
02:39PM 17 WHAT WEB PROPERTIES SHE'S BEEN TO AND HOW LONG SHE WAS THERE  
02:39PM 18 AND WHAT SHE DID THERE, OR WHATEVER THE DATA IS THAT IS  
02:39PM 19 TRACKED, BUT THEN THAT DEVICE -- THERE MAY BE OTHER COOKIES  
02:39PM 20 THAT ARE TRACKING OTHER THINGS THAT THAT DEVICE DOES.

02:39PM 21 MR. BARNES: NO, OTHER COOKIES TRACKING OTHER WEB  
02:39PM 22 PROPERTIES --

02:39PM 23 THE COURT: OTHER WEB --

02:39PM 24 MR. BARNES: -- SHE'S VISITED THAT WE WEREN'T ABLE  
02:39PM 25 TO CAPTURE IN OUR -- IN WHAT WE SENT TO GOOGLE.

02:40PM 1 THE COURT: OKAY. ALL RIGHT.

02:40PM 2 MR. SCHAPIRO: SO I THINK JOEY IS GOING TO ADDRESS  
02:40PM 3 THIS AS WELL.

02:40PM 4 THE COURT: WAIT. BEFORE WE DO THAT, MR. BARNES,  
02:40PM 5 YOU SAID THERE WERE TWO ISSUES, AND I KEPT TAKING YOU OFF  
02:40PM 6 TRACK. I'D LIKE TO STAY ON THIS ONE, BUT WHAT IS THE --

02:40PM 7 MR. BARNES: THE SECOND ISSUE IS -- THANK YOU FOR  
02:40PM 8 COMING BACK TO ME FOR THAT SECOND ISSUE, YOUR HONOR. I  
02:40PM 9 DEFINITELY WANTED TO HIT THE SECOND ISSUE -- IS WHAT WE DEEM IS  
02:40PM 10 AN IMPROPER ATTEMPT TO CARVE OUT A SUBSET OF PLAINTIFFS' DATA.

02:40PM 11 SO GOOGLE WRITES IN THEIR RESPONSE THAT WE HAVE SOME,  
02:40PM 12 QUOTE, "NEWLY MINTED REQUEST FOR WEB SEARCH HISTORY." THAT'S  
02:40PM 13 NOT NEWLY MINTED AT ALL, YOUR HONOR. IT IS A SUBSET OF THE  
02:40PM 14 DATA THAT WE HAVE REQUESTED IN THE ORIGINAL RFP.

02:40PM 15 IT'S ALSO DIRECTLY RELEVANT TO DATA COLLECTED FROM USERS  
02:40PM 16 WHILE THEY'RE NOT IN A SYNCED STATE BECAUSE THE DATA THAT  
02:41PM 17 EXISTS IN GOOGLE'S SEARCH FACILITY IS NOT LIMITED TO THAT WHICH  
02:41PM 18 YOU TYPE IN DIRECTLY AND PURPOSEFULLY AT THE WEBSITE  
02:41PM 19 GOOGLE.COM.

02:41PM 20 THERE ARE AT LEAST TWO OTHER EXAMPLES WHERE WE BELIEVE  
02:41PM 21 IT'S STORED IN THE SEARCH HISTORY. THERE'S A TOOL CALLED  
02:41PM 22 CUSTOM SEARCH ENGINE WHICH SENDS TRANSMISSIONS TO A WEB ADDRESS  
02:41PM 23 CALLED CSE.GOOGLE.COM, AND IT TRACKS USERS BY DEVICE AND GAIA,  
02:41PM 24 AND THOSE CUSTOM SEARCH ENGINES APPEAR ON WEB PROPERTIES  
02:41PM 25 THROUGHOUT THE INTERNET. AND WHEN PEOPLE DO SEARCHES ON THEM,

02:41PM 1 THEY DON'T KNOW THAT THEY'RE EFFECTIVELY ON GOOGLE.COM DOING  
02:41PM 2 THOSE SEARCHES.

02:41PM 3 SO OUR PLAINTIFF CSM.GOOGLE.COM SEARCHES WE BELIEVE WILL  
02:41PM 4 SHOW UP IN A SEARCH ENGINE RESULT.

02:41PM 5 IN ADDITION TO THAT GOOGLE HAS AT THE TOP OF THE CHROME  
02:42PM 6 BROWSER THERE'S A TOOLBAR, YOUR HONOR. IF YOU DIRECTLY TYPE A  
02:42PM 7 WEB ADDRESS INTO THAT TOOLBAR, AGAIN, NOT CONDUCTING A SEARCH,  
02:42PM 8 BUT LET'S SAY THAT YOU WANT TO GO --

02:42PM 9 THE COURT: SO LET ME -- I'M GOING TO INTERRUPT YOU  
02:42PM 10 THERE, MR. BARNES, AGAIN, BECAUSE I HAVE TO KEEP US MOVING.

02:42PM 11 I SEE THE REQUEST FOR, YOU KNOW, ORDERS PRODUCING MORE  
02:42PM 12 INFORMATION. WHAT -- IS THERE A -- ARE THERE ANY NEXT STEPS  
02:42PM 13 ALREADY TEED UP? ARE WE JUST TALKING ABOUT DOCUMENT  
02:42PM 14 PRODUCTION? IS THERE A DEPOSITION IN AND AROUND THESE TOPICS  
02:42PM 15 IN THIS CASE? TELL ME.

02:42PM 16 MR. BARNES: THERE'S A DEPOSITION, YOUR HONOR. BUT  
02:42PM 17 AS IT RELATES TO THIS SEARCH ISSUE, THIS IS SOMETHING THAT WE  
02:42PM 18 NEED BEFORE THE DEPOSITION. IT GOES DIRECTLY TO AN ISSUE AT  
02:42PM 19 THE HEART OF THIS CASE, THE CSE.GOOGLE.COM, AND THEN WHAT  
02:42PM 20 HAPPENS IN A TOOLBAR WHEN YOU LOOKED UP --

02:42PM 21 THE COURT: WHEN IS THE DEPOSITION, MR. BARNES?

02:42PM 22 MR. BARNES: THE DEPOSITION IS JUNE 11TH.

02:43PM 23 AND THERE'S A PLAINTIFF DEPOSITION ON JUNE 10TH, WHICH WE  
02:43PM 24 WANT AHEAD OF TIME, TOO. WE PREDICATED THE PLAINTIFFS'  
02:43PM 25 DEPOSITIONS, WHICH THEY WANTED TO TAKE EARLY UPON RECEIVING ALL

02:43PM 1 OF THE DATA THAT THEY HAVE ABOUT OUR PLAINTIFFS.

02:43PM 2 THE COURT: WELL, THAT WASN'T EXACTLY MY ORDER.

02:43PM 3 MR. BARNES: FAIR ENOUGH, YOUR HONOR.

02:43PM 4 THE COURT: OKAY.

02:43PM 5 MS. WEAVER: YOUR HONOR, MAY I ANSWER YOUR QUESTION  
02:43PM 6 NUMBER ONE, IF I MAY? THIS IS LESLEY WEAVER, AND I'M ALSO ON  
02:43PM 7 MR. BARNES'S TEAM.

02:43PM 8 THE COURT: I THINK I'M GOOD. THANK YOU,  
02:43PM 9 MS. WEAVER. I'M GOING TO TURN TO MR. SCHAPIRO OR MR. ANSORGE.

02:43PM 10 MR. ANSORGE: YES, YOUR HONOR. THANK YOU,  
02:43PM 11 YOUR HONOR.

02:43PM 12 THE COURT: MR. ANSORGE, YOUR CONNECTION HAS GOTTEN  
02:44PM 13 QUITE BAD, AND I NOTICED IT LAST TIME THAT YOU WERE TRYING TO  
02:44PM 14 SPEAK. THERE'S A LOT OF PAUSES AND BREAKUPS.

02:44PM 15 MR. ANSORGE: THAT MIGHT BE AN INTERNET PROBLEM HERE  
02:44PM 16 BECAUSE I'M ON THE HARD LINE AS WELL. APOLOGIES, YOUR HONOR.

02:44PM 17 IS IT BETTER?

02:44PM 18 MR. SCHAPIRO: IT'S BETTER.

02:44PM 19 THE COURT: HANG ON.

02:44PM 20 MS. RODRIGUEZ, IS THAT THE ISSUE THAT YOU HAD WANTED TO  
02:44PM 21 ADDRESS?

02:44PM 22 MADAM COURT REPORTER: YES, YOUR HONOR. THANK YOU.  
02:44PM 23 I WILL INTERRUPT AGAIN IF HE KEEPS TIMING OUT.

02:44PM 24 THE COURT: YES, YOU WILL.

02:44PM 25 MR. ANSORGE, LET'S GO A LITTLE BIT SLOWLY. DESPITE MY

02:44PM 1 PUSHING EVERYONE, LET'S GO A LITTLE BIT SLOWLY.

02:44PM 2 MR. ANSORGE: THANK YOU, YOUR HONOR.

02:44PM 3 I WAS AGREEING WITH PLAINTIFFS' COUNSEL THAT [REDACTED]

02:44PM 4 [REDACTED]

02:44PM 5 [REDACTED]

02:44PM 6 [REDACTED]

02:44PM 7 [REDACTED]

02:45PM 8 [REDACTED]

02:45PM 9 [REDACTED]

02:45PM 10 NOW, WHEN MR. BARNES WAS REFERRING TO [REDACTED]

02:45PM 11 [REDACTED] WE UNDERSTAND THAT COULD SOUND LIKE IT HAS SOME

02:45PM 12 NEGATIVE CONNOTATIONS IN THE WAY THAT HE WAS REPRESENTING IT,

02:45PM 13 AND I JUST WANT TO TAKE THIS OPPORTUNITY TO CLARIFY THAT. THE

02:45PM 14 POINT OF THAT SPACE IS [REDACTED]

02:45PM 15 [REDACTED] THAT'S NOT WHAT IT IS IN PRACTICE,

02:45PM 16 AND THAT'S NOT WHAT IT IS DESIGNED TO BE AT ALL.

02:45PM 17 THE POINT OF [REDACTED]

02:45PM 18 [REDACTED]

02:45PM 19 [REDACTED]

02:45PM 20 [REDACTED]

02:45PM 21 [REDACTED]

02:45PM 22 [REDACTED]

02:45PM 23 [REDACTED]

02:45PM 24 SO THERE'S A LOT OF WORK THAT GOES INTO IT MAKING SURE

02:45PM 25 THAT [REDACTED]

02:45PM 1

02:45PM 2

02:46PM 3

02:46PM 4

02:46PM 5

02:46PM 6

02:46PM 7

02:46PM 8

02:46PM 9

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02:46PM 18

02:46PM 19

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02:47PM 23

02:47PM 24

02:47PM 25

[REDACTED]

THE SECOND POINT I WANTED TO TOUCH ON, AND THIS IS ISSUE TWO THAT MR. BARNES WAS HIGHLIGHTING. TO BE FRANK, WE WERE SURPRISED THAT SEARCH IS NOW AT ISSUE, AND THIS IS SOMETHING THAT WE HAD RAISED AT SOME MOMENTS WITH PLAINTIFFS, BUT WE DON'T UNDERSTAND HOW THERE'S GOING TO BE A PRIVACY CASE AGAINST GOOGLE FOR INFORMATION THAT THE USER PUTS INTO A GOOGLE SEARCH ENGINE.

SO WHAT WE'RE TRYING TO DO HERE IN ONE WAY OR ANOTHER IS THINK OF WAYS IN WHICH WE CAN SPECIFY WHAT IS REALLY RELEVANT AND WHAT IS THAT ISSUE, AND SEARCH ENTAILS A LOT OF DIFFERENT DATASETS, A LOT OF DIFFERENT CUSTODIANS, IT BRINGS IN DIFFERENT TYPES OF INFORMATION WHICH WE BELIEVE AREN'T REFLECTED IN THE COMPLAINT.

SO WHAT WE WOULD LIKE TO DO IS FOCUS ON THE DATA AT ISSUE WHICH IS BROWSING INFORMATION OR SITE ACTIVITY DATA WHEN A USER VISITS THE WEBSITE THAT HAS ANALYTIC SERVICES OR GOOGLE AD MANAGER SERVICES.

THE COURT: JUST AT THE END THERE YOU TIMED OUT, MR. ANSORGE.

MR. ANSORGE: THIS CONNECTION IS TERRIBLE. I'M REALLY SORRY EVERYBODY.

MR. SCHAPIRO: IT'S BEEN FINE. YOU JUST DROPPED OFF THE FINAL TEN SECONDS.

THE COURT: JUST AT THE VERY END. WHAT WAS THE LAST



02:47PM 1           THING, IF YOU REMEMBER, THAT YOU SAID?

02:47PM 2                   MR. ANSORGE: I THINK I WAS JUST APOLOGIZING AND  
02:47PM 3           THANKING EVERYBODY FOR THEIR PATIENCE WITH MY BAD INTERNET  
02:47PM 4           CONNECTION.

02:47PM 5                   THE COURT: OKAY. WE'LL TAKE THAT THERE. OKAY.  
02:47PM 6           ALL RIGHT.

02:47PM 7                   MR. SCHAPIRO: AND, YOUR HONOR, COULD I JUST ADD  
02:47PM 8           THAT --

02:47PM 9                   THE COURT: WELL, FIRST ANSWER THIS QUESTION,  
02:47PM 10          MR. SCHAPIRO, WHICH IS IT WASN'T QUITE CLEAR TO ME FROM THE  
02:47PM 11          SUMMARY. IS GOOGLE STILL PRODUCING INFORMATION IN RESPONSE TO  
02:47PM 12          THIS REQUEST IN ADVANCE AND IN ANTICIPATION OF AND IN ADVANCE  
02:47PM 13          OF THE JUNE 10TH AND JUNE 11TH DEPOSITIONS?

02:47PM 14                  MR. SCHAPIRO: THAT ONE I'M GOING TO HAVE TO KICK TO  
02:47PM 15          SOMEONE ELSE, TOO.

02:47PM 16                  I THINK WE HAVE PRODUCED WHAT WE WERE SUPPOSED TO PRODUCE,  
02:48PM 17          WELL, WHAT WE BELIEVE WE WERE SUPPOSED TO PRODUCE IN TERMS OF  
02:48PM 18          DATA ASSOCIATED WITH THE PLAINTIFFS.

02:48PM 19                  BUT I'LL INVITE ONE OF MY COLLEAGUES TO CORRECT ME IF  
02:48PM 20          THERE IS STILL SOME COMING. THAT IS ALWAYS POSSIBLE.

02:48PM 21                  MR. STRAITE: YOUR HONOR, THIS IS DAVID STRAITE FOR  
02:48PM 22          PLAINTIFFS. I CAN ANSWER THAT QUESTION. WE MADE THE SAME  
02:48PM 23          INQUIRY YESTERDAY TO GOOGLE COUNSEL AND ASKED WHEN, YOU KNOW,  
02:48PM 24          WHEN WE WERE RECEIVING ADDITIONAL PLAINTIFF INFORMATION,  
02:48PM 25          DOCUMENTS IN ADVANCE OF NEXT WEEK'S DEPOSITION.

02:48PM 1 WE WERE TOLD THAT WE'RE STILL ON TARGET FOR JUNE 4TH AS  
02:48PM 2 THE TARGET TO GET THE NEXT BATCH OF PLAINTIFF DOCUMENTS.  
02:48PM 3 THAT'S NEXT FRIDAY, TWO DAYS FROM TODAY. WE ARE HOPEFUL TO GET  
02:48PM 4 IT. WE DID HAVE A COMMITMENT TO GET ALL OF THE DOCUMENTS  
02:48PM 5 SEVEN DAYS PRIOR TO THE DEPOSITION. THIS IS SIX DAYS. THAT'S  
02:48PM 6 APPROXIMATE. THAT'S GOOD ENOUGH.

02:48PM 7 IF WE ARE ACTUALLY GETTING THE PROFILES, WHICH IS THE MOST  
02:48PM 8 IMPORTANT THING, THE INFORMATION IN DOCUMENTS ASSOCIATED WITH  
02:48PM 9 THE PLAINTIFFS AND THEIR IDENTIFIERS. WE'RE HOPEFUL. WE'LL  
02:48PM 10 SEE WHAT HAPPENS ON JUNE 4TH.

02:49PM 11 MR. BARNES: THERE'S ANOTHER ISSUE, YOUR HONOR. WE  
02:49PM 12 RECEIVED, I BELIEVE, TWO DOCUMENTS SINCE THE LAST HEARING.  
02:49PM 13 THERE IS SOME DIFFICULTY BECAUSE THEY DON'T ALWAYS COME.  
02:49PM 14 GOOGLE -- THEY DON'T ALWAYS COME WITH LABELS STATING TO WHOM  
02:49PM 15 THEY ARE RELATED, AND WE'VE BEEN ABLE TO DEDUCE TO WHOM THEY  
02:49PM 16 ARE RELATED, BUT WE'RE GETTING THESE THINGS THAT -- AND THEY'RE  
02:49PM 17 SENDING THEM OVER THE LINE WITHOUT ANY NOTATIONS ON WHO THEY  
02:49PM 18 ARE, EVEN THOUGH GOOGLE IS CONNECTING OBVIOUSLY WHO IS WHO TO  
02:49PM 19 PROVIDE US THIS.

02:49PM 20 THE COURT: HAVE YOU ASKED GOOGLE TO MAKE THAT  
02:49PM 21 CONNECTION? HAVE THE PARTIES HAD THIS DISCUSSION?

02:49PM 22 MR. BARNES: YES, YOUR HONOR. I BELIEVE WE HAVE  
02:49PM 23 ASKED MULTIPLE TIMES FOR GOOGLE TO IDENTIFY WHICH SPECIFIC  
02:49PM 24 REQUESTS THAT PRODUCTIONS RELATE TO.

02:49PM 25 THE COURT: IS IT RESPONSIVE TO A REQUEST OR TO A

02:49PM 1 PLAINTIFF, OR BOTH?

02:49PM 2 MR. BARNES: WELL, THIS WOULD BE RESPONSIVE TO A  
02:49PM 3 REQUEST. IT WOULD ALSO NECESSARILY IDENTIFY A PLAINTIFF.

02:49PM 4 OFF THE TOP OF MY HEAD, I DON'T KNOW WHETHER I SAID TELL  
02:50PM 5 US WHETHER DOCUMENT 35342 IS PLAINTIFF CALHOUN OR CRESPO.

02:50PM 6 THE COURT: ALL RIGHT.

02:50PM 7 MS. TREBICKA: YOUR HONOR --

02:50PM 8 THE COURT: EXCUSE ME, MS. TREBICKA.

02:50PM 9 IS THERE ANY REASON ON GOOGLE'S SIDE -- I KNOW DOCUMENT  
02:50PM 10 PRODUCTIONS GET GOING, AND THEY'RE ROLLING PRODUCTIONS, AND  
02:50PM 11 YOU'VE HAD A LOT OF REQUESTS AND LOTS OF DOCUMENTS AREN'T  
02:50PM 12 NECESSARILY RESPONSIVE TO ONLY ONE REQUEST, BUT IT WOULD SEEM  
02:50PM 13 THAT WHAT REQUESTS DOCUMENTS ARE BEING PRODUCED IN RESPONSE TO,  
02:50PM 14 THAT THOSE COULD BE IDENTIFIED, MAY NOT BE A PERFECT ONE-TO-ONE  
02:50PM 15 CORRESPONDENCE, BUT THIS PRODUCTION RELATES TO THIS REQUEST OR  
02:50PM 16 THESE REQUESTS.

02:50PM 17 TO THE EXTENT THAT IT IS PLAINTIFF DATA, PLAINTIFF DATA  
02:50PM 18 THAT IS THE SUBJECT OF 1.3, THE SPECIFIC PLAINTIFFS OUGHT TO BE  
02:50PM 19 ABLE TO BE IDENTIFIED.

02:51PM 20 MR. BARNES: THANK YOU, YOUR HONOR. MAY I HAVE ONE  
02:51PM 21 MORE ISSUE ON THIS?

02:51PM 22 THE COURT: NO. THAT'S ENOUGH, MR. BARNES. THANK  
02:51PM 23 YOU.

02:51PM 24 SO WHO WANTS TO SPEAK TO THAT ON GOOGLE'S SIDE?

02:51PM 25 MR. SCHAPIRO: I THINK THAT WOULD BE MS. TREBICKA ON

02:51PM 1 WHAT WE'RE ABLE TO -- WHAT INFORMATION THAT WE CAN PROVIDE  
02:51PM 2 ABOUT LINKING TO OR SHOWING WHICH PRODUCTIONS RELATE TO WHICH  
02:51PM 3 PLAINTIFFS.

02:51PM 4 THE COURT: OKAY. JUST ONE MOMENT BEFORE WE DO  
02:51PM 5 THAT.

02:51PM 6 THE PHONE NUMBER IDENTIFIER THAT HAS JUST BEEN ADMITTED,  
02:51PM 7 MR. ANSORGE?

02:51PM 8 MR. ANSORGE: JOSEF ANSORGE TRYING TO OVERCOME THE  
02:51PM 9 INTERNET PROBLEM.

02:51PM 10 THE COURT: EXCELLENT. THAT'S WHAT I ASSUMED.  
02:51PM 11 THANK YOU.

02:51PM 12 ALL RIGHT. MS. TREBICKA, I CUT YOU OFF BUT NOW YOU HAVE  
02:51PM 13 MY QUESTION IN MIND. PLEASE.

02:51PM 14 MS. TREBICKA: APOLOGIES. I WAS TRYING TO FIND MY  
02:51PM 15 MUTE BUTTON OR UNMUTE BUTTON RATHER.

02:51PM 16 SO TWO ISSUES, YOUR HONOR. THE FIRST ISSUE IS WHETHER WE  
02:51PM 17 CAN IDENTIFY THE PRODUCTION OF PLAINTIFFS' DATA BY EITHER  
02:51PM 18 PLAINTIFFS OR COOKIES THAT WE HAVE BEEN PROVIDED, AND THE  
02:52PM 19 ANSWER IS YES. I'M -- WE CAN DO THAT. IT SOUNDS LIKE A  
02:52PM 20 REASONABLE REQUEST. IT HASN'T BEEN MADE BEFORE.

02:52PM 21 THE REQUEST THAT WE HAVE ENCOUNTERED BEFORE IS THAT WE  
02:52PM 22 IDENTIFY THE PARTICULAR RFP'S TO WHICH THE DOCUMENTS THAT WE  
02:52PM 23 PRODUCE RELATE TO, AND THAT IS SOMETHING THAT WOULD BE  
02:52PM 24 EXTREMELY BURDENSOME TO DO.

02:52PM 25 THE WAY IN WHICH WE PRODUCE DOCUMENTS IS WE IDENTIFY THE

02:52PM 1 CUSTODIANS, WE RUN THE SEARCH TERMS, WE DO THE REVIEW, AND THEN  
02:52PM 2 ON THE BASIS OF THOSE SEARCH TERMS AND THE CUSTODIAL DOCUMENTS,  
02:52PM 3 WE PRODUCE THE DATA. IT WOULD BE VERY BURDENSOME TO THEN GO  
02:52PM 4 BACK AND LINK THOSE UP TO PARTICULAR RFP'S. THAT IS SOMETHING  
02:52PM 5 THAT WE HAVE RESISTED, AND WE WOULD RESPECTFULLY ASK THAT WE  
02:52PM 6 NOT BE ORDERED TO DO. IT'S NOWHERE IN THE RULES. IT'S NOT  
02:52PM 7 PRACTICE.

02:52PM 8 THE COURT: WELL, AND THAT'S FINE. THERE'S A  
02:52PM 9 DISTINCTION HERE BETWEEN CUSTODIAL PRODUCTIONS, WHICH SHOULD BE  
02:52PM 10 IDENTIFIED AS SUCH, RIGHT? THESE ARE THE PRODUCTION FROM  
02:52PM 11 CUSTODIAN X, AND EVERYBODY KNOWS WHAT THOSE TERMS WERE RUN  
02:53PM 12 SHOULD BE IDENTIFIED BY CUSTODIAN.

02:53PM 13 BUT WITH REGARDS TO A REQUEST SUCH AS 1.3, GIVE US  
02:53PM 14 PLAINTIFFS' DATA THAT IS NOT -- WE'RE NOT TALKING ABOUT -- I  
02:53PM 15 MEAN, THERE MAY BE CUSTODIAL DOCUMENTS THAT ARE ALSO  
02:53PM 16 RESPONSIVE, BUT THERE ARE ALSO OTHER DOCUMENTS THAT ARE NOT  
02:53PM 17 CUSTODIAL THAT YOU'VE RUN AND PULLED SPECIFICALLY BECAUSE  
02:53PM 18 THEY'RE ASKING FOR PLAINTIFFS' DATA. SO THOSE DOCUMENTS COULD  
02:53PM 19 CERTAINLY BE IDENTIFIED AS RESPONSIVE TO 1.3.

02:53PM 20 SO I EXPECT THE PARTIES TO DO THIS. I MEAN, EVERYBODY ON  
02:53PM 21 THIS CALL HAS BEEN WELL TRAINED AND WELL PRACTICED IN DOCUMENT  
02:53PM 22 PRODUCTIONS, AND THERE'S NO, THERE'S NO HIDING THE BALL. BUT  
02:53PM 23 CUSTODIAN PRODUCTION SHOULD BE IDENTIFIED BY CUSTODIAN, BUT  
02:53PM 24 OTHER NONCUSTODIAL PRODUCTIONS, TO THE EXTENT THAT IT'S, YOU  
02:53PM 25 KNOW, FOR THE MOST PART THEN THEY SHOULD BE ABLE TO BE

02:53PM 1 IDENTIFIED BY REQUEST. IT MAY NEED MORE THAN ONE REQUEST.

02:54PM 2 AND CERTAINLY FOR PLAINTIFFS, THE PLAINTIFFS' DATA WHEN  
02:54PM 3 YOU'RE SENDING OVER THE RESULTS OF SEARCHES WITH COOKIES, ET  
02:54PM 4 CETERA, THAT SHOULD BE IDENTIFIED FOR THE PLAINTIFF.

02:54PM 5 MR. SCHAPIRO: YOUR HONOR, COULD I ASK CLARIFICATION  
02:54PM 6 ON SOMETHING YOU'VE JUST SAID. I THINK WE AGREE AND HAVE NO  
02:54PM 7 OBJECTION TO IDENTIFYING BY PLAINTIFF. EASY ENOUGH.  
02:54PM 8 REASONABLE. TO THE EXTENT THAT THAT WAS ASKED BEFORE, IT WAS  
02:54PM 9 NOT CLEAR TO US THAT THAT'S WHAT WAS BEING ASKED.

02:54PM 10 BUT I DO WANT TO PUSH BACK A LITTLE ON THE SUGGESTION THAT  
02:54PM 11 WE COULD SIMPLY LINK PRODUCTIONS TO RFP'S.

02:54PM 12 THERE ARE HUNDREDS OF -- IF THAT'S NOT YOUR SUGGESTION  
02:54PM 13 THEN --

02:54PM 14 THE COURT: WELL, MR. SCHAPIRO, I UNDERSTAND THAT  
02:54PM 15 IT'S, AGAIN, IT'S NOT A ONE TO ONE. IT'S NOT EASY. BUT TO THE  
02:54PM 16 EXTENT THAT YOU -- THAT IT'S OBVIOUS OR THAT YOU KNOW, YOU  
02:55PM 17 KNOW, YOU WERE LOOKING FOR X, YOU KNOW, IT MAY COVER MULTIPLE  
02:55PM 18 RFP'S. THE PARTIES CAN DISCUSS AND CAN FIGURE OUT A WAY TO  
02:55PM 19 MAKE THIS WORK. OKAY? AND THAT'S --

02:55PM 20 MR. SCHAPIRO: WE'LL DISCUSS BUT JUST TO PULL BACK  
02:55PM 21 THE CURTAIN, YOUR HONOR, THERE ARE DOZENS OF REVIEWERS LOOKING  
02:55PM 22 AT DOCUMENTS, IDENTIFYING SEARCH TERMS. THIS WOULD DELAY BY  
02:55PM 23 WEEKS PRODUCTIONS. IF SOMEONE THEN HAS TO GO AND SAY LET'S TRY  
02:55PM 24 AND FIGURE OUT HUNDREDS, AT LEAST IN THE BROWN CASE, RFP'S DOES  
02:55PM 25 THIS ANSWER, AND WE GET IT WRONG AS OFTEN AS THEY GET IT RIGHT.

02:55PM 1 THE COURT: AND THAT'S NOT WHAT I'VE TOLD YOU TO DO.  
02:55PM 2 THAT'S NOT THE INTENT AT ALL.

02:55PM 3 MR. SCHAPIRO: LET THE RECORD SHOW I'M NOT NODDING  
02:55PM 4 AND HOLDING A THUMBS UP.

02:55PM 5 THE COURT: ALL RIGHT. THE PARTIES CAN WORK THIS  
02:55PM 6 OUT. ALL RIGHT? TO THE EXTENT THAT THERE ARE REQUESTS AND  
02:55PM 7 PRODUCTIONS THAT RELATE TO SPECIFIC REQUESTS, THAT NEEDS TO BE  
02:55PM 8 IDENTIFIED.

02:55PM 9 YOU'RE RIGHT, WHEN YOU'RE DOING CUSTODIAN SEARCHES AND YOU  
02:55PM 10 HAVE THIS ROOM FULL OF DOCUMENTS IN THE OLD DAYS THAT REVIEWERS  
02:56PM 11 REVIEWED, YEAH, YOU WEREN'T TYING THEM TO SPECIFIC REQUESTS.

02:56PM 12 BUT WHEN YOU GO INTO AND YOU'RE RUNNING SPECIFIC SEARCHES  
02:56PM 13 IN RESPONSE TO A SPECIFIC REQUEST, AND I HAVE 1.3 IN MIND, AND  
02:56PM 14 YOU'RE MAKING THAT PRODUCTION, IDENTIFY IT. OKAY?

02:56PM 15 MR. SCHAPIRO: THANK YOU, YOUR HONOR.

02:56PM 16 THE COURT: OKAY. WE'RE GOING TO TAKE A SHORT BREAK  
02:56PM 17 FOR MYSELF AND MS. RODRIGUEZ. WE WILL COME BACK AND TURN VERY  
02:56PM 18 QUICKLY TO A COUPLE OF REMAINING ISSUES.

02:56PM 19 WE WILL TALK BRIEFLY ABOUT CROSS USE BECAUSE THAT INVOLVES  
02:56PM 20 BOTH PARTIES, AND THEN WE'LL TOUCH BASE ON JUST A COUPLE OF  
02:56PM 21 OTHER ISSUES FOR TODAY. OKAY?

02:56PM 22 THANK YOU. TEN MINUTES. THANKS. WE'RE IN RECESS.

02:56PM 23 (RECESS FROM 2:56 P.M. UNTIL 3:08 P.M.)

03:08PM 24 THE COURT: OKAY. ALL RIGHT. WE ARE BACK IN  
03:08PM 25 SESSION. BEFORE I TURN TO CROSS USE, THERE ARE TWO OTHER

03:08PM 1 ISSUES I'M JUST GOING TO ADDRESS BRIEFLY IN BROWN, AND I'M  
03:08PM 2 GOING TO GIVE YOU MY RULINGS ON THOSE.

03:08PM 3 WITH REGARDS TO P4, WHICH IS THE SCOPE OF THE DEPOSITION,  
03:08PM 4 AS THIS MAY IMPACT THE UPCOMING DEPOSITION. WITH REGARDS TO  
03:08PM 5 THE ISSUE OF DOCUMENT RETENTION, THE PLAINTIFFS CAN INQUIRE AS  
03:08PM 6 TO GENERAL RETENTION PRACTICES AND PROTOCOLS AS IT RELATES TO  
03:09PM 7 THE DATABASES OR WHATEVER IT IS THERE IS THE FOCUS OF THE  
03:09PM 8 INQUIRY.

03:09PM 9 EVERYONE NEEDS TO UNDERSTAND WHAT THOSE ARE, AND THIS IS  
03:09PM 10 NOT -- THIS DOES NOT REVISIT THE ISSUES AROUND THE CURRENT  
11 STATUS OF THE PROTECTIVE ORDER, BUT IT IS APPROPRIATE TO  
12 INQUIRE AS TO, AGAIN, WHAT THE RETENTION AND PRACTICES AND  
13 PROTOCOLS ARE AND AS WELL AS WHAT IT WOULD TAKE TO MAKE  
14 ADJUSTMENTS TO THOSE, WHETHER ANY OF THOSE CAN BE ADJUSTED OR  
15 CAN BE SUSPENDED, ET CETERA.

16 THIS IS OBVIOUSLY AN ONGOING ISSUE. I GRANTED THE  
17 PROTECTIVE ORDER WITHOUT PREJUDICE TO MORE INFORMATION IN THE  
18 FUTURE. I AM NOT INVITING REARGUMENT ON THAT AT THIS TIME.  
19 THE POSITION ON PRESERVATION OF THE LOGS STANDS BUT CERTAINLY  
20 GENERAL RETENTION ISSUES CAN BE INQUIRED INTO.

21 THAT WILL HELP THE PLAINTIFFS TO UNDERSTAND WHAT IS AND IS  
22 NOT PRESERVED. AND AS I SAY, IF NEW FACTS LATER ARISE AS TO  
23 THE LOGS OR THE ABILITY TO DEVIATE FROM RETENTION PRACTICES  
24 THEN, YOU KNOW, IF APPROPRIATE, I MAY CONSIDER THAT. SO THAT  
25 IS P4.



1 WITH REGARDS TO P10 THE DEADLINE FOR PRODUCTION OR --  
2 EXCUSE ME, EXTENSION OF PRODUCTION OF DOCUMENTS BY GOOGLE, THIS  
3 RELATES SPECIFICALLY TO THE JUNE 18TH DEADLINE THAT I HAD PUT  
4 IN PLACE, AND I AM GOING TO ADDRESS THIS THIS WAY AT THIS TIME,  
5 WHICH IS JUNE 18TH HOLDS FOR THE ORIGINAL CUSTODIANS, THAT IS,  
6 ANY OF THE CUSTODIANS IDENTIFIED OR ADDRESSED IN MY ORIGINAL  
7 APRIL 30TH ORDER. SO THAT IS THE ORIGINAL 10 PLUS 7, SO 17  
8 CUSTODIANS, AND THE TERMS. AND IF I AM UNDERSTANDING OR IF I  
9 DID THE MATH CORRECTLY, I THINK FOR THE ORIGINAL 10 THERE ARE  
10 101 TERMS, 76 PLUS 24, OR MAYBE I HAVE THAT BACKWARDS.

11 AND THEN FOR THE 7 ADDITIONAL CUSTODIANS THERE ARE THE 10  
12 TERMS. SO THOSE TERMS, THOSE CUSTODIANS THE JUNE PRODUCTION  
13 HOLDS.

14 I WILL PROVIDE FOR A MODEST EXTENSION ON THE OTHER  
15 PRODUCTION DEADLINES, BUT IT'S NOT GOING TO BE THE SAME LENGTH  
16 WITH REGARDS TO THE EXTENSION OF FACT DISCOVERY THAT JUDGE KOH  
17 GAVE YOU.

18 I AM GOING TO GIVE THAT SOME CONSIDERATION AND I AM ASK  
19 FOR FURTHER INPUT ON THAT, BUT I AM VERY MINDFUL OF THE RULE  
20 AND HOW IMPORTANT IT IS. WE HAVE GOT TO GET THE DOCUMENTS  
21 PRODUCED IN THIS CASE. OBVIOUSLY, WE ARE ALL SPENDING A LOT OF  
22 TIME AND ENERGY AS TO WHAT THOSE DOCUMENTS ARE, BUT THE  
23 PRODUCTIONS NEED TO BE SUFFICIENTLY IN ADVANCE OF THE MOTION  
24 ACTIVITY THAT JUDGE KOH HAS SET FOR YOU SO THOSE ISSUES CAN BE  
25 ADDRESSED AND ASSESSED OUT. SO THAT IS WHERE WE ARE ON THOSE

1 TWO ISSUES, THAT IS P4 AND P10.

2 NOW WE WILL TURN TO CROSS USE.

3 THE CLERK: YOUR HONOR, I AM SORRY TO INTERRUPT. I  
4 JUST WANTED TO LET YOU KNOW WE DID LOSE OUR COURT REPORTER.

5 THE COURT: OH.

6 THE CLERK: SHE IS TRYING TO DIAL BACK IN.

7 MR. SCHAPIRO: AND SO, YOUR HONOR, YOU WERE SAYING  
8 WE WIN EVERYTHING WHILE THE COURT REPORTER WAS OFF?

9 THE COURT: IT IS IMPORTANT TO KEEP OUR SENSE OF  
10 HUMOR, MR. SCHAPIRO, AT ALL TIMES. BUT I DON'T NEED A COUNTER  
11 ARGUMENT FROM THE PLAINTIFFS. THANK YOU.

03:15PM 12 (PAUSE IN PROCEEDINGS.)

03:15PM 13 THE COURT: HAVE YOU HEARD FROM MS. RODRIGUEZ,  
14 MS. FANTHORPE?

15 THE CLERK: SHE IS TRYING TO DIAL IN RIGHT NOW.

16 THE COURT: LET'S GIVE HER A MOMENT THEN.

17 (PAUSE IN PROCEEDINGS.)

18 THE COURT: IS THAT HER?

19 MADAM COURT REPORTER: HELLO. THIS IS IRENE.

20 (PAUSE IN PROCEEDINGS.)

21 THE COURT: I THINK EVERYONE UNDERSTANDS WHERE WE  
22 ARE ON P4. IT SOUNDS LIKE WE DID NOT HAVE THE REPORTER FOR P10  
03:15PM 23 AND P10 RELATES TO AN EXTENSION OF THE DOCUMENT PRODUCTION  
03:15PM 24 DEADLINE. THE JUNE 18TH DEADLINE WILL HOLD FOR THE ORIGINAL  
03:15PM 25 CUSTODIANS AND SEARCH TERMS AS REFLECTED IN MY APRIL 30TH

03:15PM 1 ORDER.

03:15PM 2 WITH REGARDS TO ADDITIONAL PRODUCTIONS, I'M TAKING THE  
03:15PM 3 REQUEST FOR A FURTHER EXTENSION UNDER SUBMISSION. IT WILL NOT  
03:15PM 4 BE THE SAME LENGTH OF THE EXTENSION THAT JUDGE KOH GRANTED ON  
03:15PM 5 DISCOVERY IN GENERAL, BUT THERE MAY BE A MODEST -- THERE WILL  
03:15PM 6 BE A MODEST FURTHER EXTENSION THERE. ALL RIGHT. I WANT THE  
03:15PM 7 OBJECTIVE FOR JUNE 18TH TO BE CLEAR.

03:16PM 8 OKAY. I WAS ABOUT TO TURN TO CROSS USE, BUT AGAIN, I  
03:16PM 9 DON'T WANT US TO RUN OUT OF TIME, AND THERE IS ONE ALSO DEPO  
03:16PM 10 GATING ISSUE OR MAY IMPACT THE DEPOSITION IN CALHOUN, AND  
03:16PM 11 THAT'S TOPIC 1.1, ISSUE 1.1, WHICH RELATES TO THE HYPERLINKED  
03:16PM 12 DOCUMENTS.

03:16PM 13 THE PARTIES HAD STARTED, HAD CONTINUED THEIR MEET AND  
03:16PM 14 CONFER ON THAT, AND IT SOUNDED LIKE PLAINTIFFS HAD PROVIDED  
03:16PM 15 SOME INFORMATION TO GOOGLE MORE CLOSELY IDENTIFYING WHICH  
03:16PM 16 HYPERLINKS THEY WANTED. IT'S BEEN A WEEK SINCE I GOT THE  
03:16PM 17 PARTIES' SUBMISSION, AND I'M HOPEFUL THAT THE PARTIES WORKED  
03:16PM 18 THIS OUT IN THE INTERIM.

03:16PM 19 SO WHAT DO YOU NEED FROM ME? TELL ME QUICKLY WHAT THE  
03:17PM 20 STATUS IS ON THE HYPERLINKS. WHO HAS IT FOR CALHOUN?

03:17PM 21 MS. WEAVER: I DO, YOUR HONOR.

03:17PM 22 LESLEY WEAVER FOR CALHOUN.

03:17PM 23 WE REQUEST TWO ISSUES FOR RELIEF. ONE, WE WOULD ASK THAT  
03:17PM 24 THE COURT ORDER THEM TO PRODUCE THE HYPERLINKED DOCUMENTS THAT  
03:17PM 25 WE REQUESTED, WELL, IMMEDIATELY. WE'VE PROVIDED THEM A LETTER

03:17PM 1 ON APRIL 16TH.

03:17PM 2 THE COURT: OKAY. LET ME JUST INTERJECT THERE,  
03:17PM 3 MS. WEAVER.

03:17PM 4 MS. WEAVER: YES.

03:17PM 5 THE COURT: HOW MANY? YOU'VE WHITTLED IT DOWN FROM  
03:17PM 6 THE 900 HYERPLINKS I PRESUME. WHAT IS THE NUMBER THAT IS IN  
03:17PM 7 DISPUTE?

03:17PM 8 MS. WEAVER: WE DON'T KNOW, YOUR HONOR. WE WERE  
03:17PM 9 TOLD ON MAY 18TH THAT GOOGLE HAD IT DOWN TO 700, BUT WE WERE  
03:17PM 10 ALSO TOLD THAT MANY OF THOSE WERE JUMP CITES WITHIN DOCUMENTS.

03:17PM 11 THE COURT: I'M ASKING HOW MANY HYERPLINKS DID YOU  
03:17PM 12 IDENTIFY? YOU'VE BEEN PREVIEWING THE PRODUCTION HYPERLINKS.  
03:17PM 13 HOW MANY HAVE YOU IDENTIFIED?

03:17PM 14 MS. WEAVER: WE UNDERSTOOD WE WERE DOWN TO 700 AND  
03:17PM 15 WE VIEW THESE HYERPLINKS AS ATTACHMENTS.

03:17PM 16 THE COURT: I KNOW YOU DO. I KNOW YOU DO. SEVEN  
03:18PM 17 HUNDRED HYERPLINKS, I THINK THAT IS TOO BROAD AND, I MEAN, IT'S  
03:18PM 18 GOT TO BE A MANAGEABLE NUMBER OF DOCUMENTS. YOU KNOW, YOU'RE  
03:18PM 19 REVIEWING THEM. THERE ARE SOME THAT ARE OF PARTICULAR INTEREST  
03:18PM 20 TO YOU, AND THOSE NEED TO BE PRIORITIZED, AND IT'S GOT TO BE A  
03:18PM 21 SMALL AND MANAGEABLE NUMBER.

03:18PM 22 THERE MAY BE, YOU KNOW, SPECIFIC DOCUMENTS THAT, YOU KNOW,  
03:18PM 23 YOU THINK SHOULD BE INCLUDED, BUT, AGAIN, THERE -- EVERYBODY  
03:18PM 24 HAS TO MAKE SOME SELECTION AND HYERPLINKS GENERALLY, I DON'T  
03:18PM 25 ACTUALLY SHARE THE VIEW THAT THEY ARE NECESSARILY ATTACHMENTS,

03:18PM 1 AND I THINK THAT HYERPLINKS GET DROPPED INTO DOCUMENTS FOR ALL  
03:18PM 2 KINDS OF REASONS, AND THE PLAINTIFFS ARE GOING TO HAVE TO BE  
03:18PM 3 REALLY DILIGENT ABOUT WHAT LOOKS LIKE IT'S GOING TO SOMETHING  
03:18PM 4 THAT IS STILL ON POINT AND WITHIN THE SCOPE OF THE REQUEST.

03:19PM 5 MS. WEAVER: UNDERSTOOD. WE IDENTIFIED THESE BY  
03:19PM 6 REVIEWING DOCUMENTS THAT GOOGLE PRODUCED IN ADVANCE OF THE  
03:19PM 7 ORIGINAL 30 (B) (6) AND MANY OF THOSE DOCUMENTS HAD 20 TO 30  
03:19PM 8 HYERPLINKS WITHIN THEM SO WE ALREADY MEANT TO BE  
03:19PM 9 DISCRIMINATORY. THERE WERE MANY MORE HYERPLINKS THAN THOSE  
03:19PM 10 THAT WE IDENTIFIED.

03:19PM 11 THE COURT: BUT 700 IS NOT WORKABLE, MS. WEAVER, 700  
03:19PM 12 IS NOT WORKABLE.

03:19PM 13 MS. WEAVER: SO WE WILL PROVIDE A NARROWED LIST I  
03:19PM 14 GATHER. I THINK IT WOULD BE HELPFUL IF GOOGLE COULD TELL US  
03:19PM 15 WHICH OF THE HYERPLINKS ARE NOT ACTUALLY HYERPLINKS BECAUSE IN  
03:19PM 16 THE DOCUMENTS THEMSELVES WE CAN'T SAY THERE WILL BE A PARAGRAPH  
03:19PM 17 DISCUSSION AND IT SAYS "SEE HERE HYPERLINK" AND WE THINK THE  
03:19PM 18 PRECEDING PARAGRAPH IS ABOUT HOW DATA IS COLLECTED AND PUT --  
03:19PM 19 THE RELEVANT DATA IS COLLECTED. SO WE CAN'T SEE THE  
03:19PM 20 HYERPLINKS. SO IT'S A LITTLE IMPOSSIBLE. WE'RE ALREADY  
03:19PM 21 GUESSING, AND WE HAVEN'T RECEIVED -- WE'VE RAISED THIS ON  
03:19PM 22 APRIL 3RD, YOUR HONOR, BEFORE THE --

03:19PM 23 THE COURT: OKAY. BUT I DON'T UNDERSTAND YOUR  
03:20PM 24 QUESTION. HOW CAN YOU NOT TELL IF SOMETHING IS A HYPERLINK?

03:20PM 25 MS. WEAVER: WE KNOW IT'S A HYPERLINK, BUT WE DON'T

03:20PM 1 KNOW WHAT THE DOCUMENT IS. SO THERE WILL BE A PARAGRAPH THAT  
03:20PM 2 SAYS -- DISCUSSING A CERTAIN TOPIC, AND THEN THE HYPERLINK  
03:20PM 3 ITSELF WILL JUST SAY GO, LIKE IT'S AN INTERNAL WIKI AND IT USES  
03:20PM 4 THE WORD GO, AND IT'S JUST A JUMP CITE AND IT MAY SAY GO SYNC  
03:20PM 5 LOGS, SO AND WE'RE JUST SAYING WHAT IS AT THAT HYPERLINK?  
03:20PM 6 GOOGLE HAS NOT COME BACK AND SAID, OH, HERE'S THE DOCUMENT OF  
03:20PM 7 THE HYPERLINK AND IT'S NOT RELEVANT.

03:20PM 8 THE COURT: RIGHT. BUT NOW YOU'RE BACK TO ASKING  
03:20PM 9 THEM TO IDENTIFY WHAT IS BEHIND 900 HYERPLINKS.

03:20PM 10 MS. WEAVER: WE HAVE DONE THE BEST WE CAN TO  
03:20PM 11 IDENTIFY WHAT WE THINK LOOKS RELEVANT BASED ON THE DATA ON THE  
03:20PM 12 PAGES. IF YOU ARE TELLING US YOU WANT US TO WHITTLE DOWN TO A  
03:20PM 13 NUMBER OF JUMP CITES, WE CAN DO THAT, BUT WE DID MAKE A GOOD  
03:20PM 14 FAITH ATTEMPT TO IDENTIFY ONLY THE ONES THAT WE THOUGHT WERE  
03:20PM 15 RELEVANT. WE DIDN'T SEEK ALL OF THE JUMP CITES IN ALL OF THE  
03:20PM 16 DOCUMENTS.

03:21PM 17 THE COURT: ALL RIGHT. HERE'S WHAT YOU'LL DO, THIS  
03:21PM 18 RELATES IN PREPARATION FOR THE DEPOSITION ON JUNE 11TH, IS YOU  
03:21PM 19 CAN IDENTIFY 40 HYERPLINKS, IDENTIFY 40, AND PROVIDE THOSE TO  
03:21PM 20 GOOGLE, AND GOOGLE WILL PRODUCE THOSE.

03:21PM 21 THE DEPOSITION IS NEXT FRIDAY. SO GET THEM PRODUCED OR  
03:21PM 22 GET THE SELECTIONS TO GOOGLE BY THE 4TH AT NOON AND GOOGLE WILL  
03:21PM 23 GET THE PRODUCTION TO THEM BY NOON ON THE 8TH.

03:21PM 24 MS. WEAVER: OKAY. WE WILL DO THAT.

03:21PM 25 THE COURT: OKAY. IF THERE ARE FURTHER ISSUES

03:22PM 1 REGARDING SPECIFIC HYERPLINKS RELATING OUT OF THE PRODUCTION,  
03:22PM 2 WE CAN ADDRESS THOSE AS THEY COME UP, BUT, YOU KNOW, MASS  
03:22PM 3 PRODUCTION OF HYERPLINKS IS GOING TO BE BEYOND THE SCOPE AND  
03:22PM 4 NOT PROPORTIONAL.

03:22PM 5 OKAY. LET'S TURN TO CROSS USE. LET ME JUST SAY, I KEEP  
03:22PM 6 SAYING AND GOING BACK, IN CALHOUN I KNOW THERE'S THE OTHER  
03:22PM 7 ISSUE, PERTINENT ISSUE -- THEY'RE ALL PERTINENT, I APPRECIATE  
03:22PM 8 THAT -- BUT THE OTHER ISSUE I HAD ON MY LIST WAS 1.6, WHICH IS  
03:22PM 9 THE CONTINUING ESI DISPUTE AND WITH REGARDS TO THE ESI  
03:22PM 10 SEARCHES, AND I MAY CONTINUE THE HEARING AS TO THAT. I MAY  
03:23PM 11 SEND THE PARTIES SOME QUESTIONS OR ASK FOR SOME FURTHER INPUT.

03:23PM 12 SO I SEE THAT, AND I DO WANT TO ADDRESS IT, AND I'LL LET  
03:23PM 13 YOU KNOW WHAT I'M GOING TO DO WITH THAT GOING FORWARD.

03:23PM 14 OKAY. LET'S TALK ABOUT CROSS USE BECAUSE THIS, AGAIN,  
03:23PM 15 RELATES TO BOTH CASES.

03:23PM 16 MY UNDERSTANDING IS THAT IN BROWN THAT THERE WAS A  
03:23PM 17 PROPOSAL -- WELL, REALLY, BOTH BROWN AND CALHOUN HAVE RAISED IT  
03:23PM 18 WITH CALHOUN DEFERRING TO THE ARGUMENT PRESENTED IN BROWN.

03:23PM 19 AND I SEE THE PROPOSAL WOULD BE A PROPOSED ORDER FROM THE  
03:23PM 20 OTHER ACTION, THE OTHER JUDGE KOH ACTION, AND I READ THROUGH  
03:23PM 21 THAT. I DON'T REJECT THAT ORDER OUT OF HAND. I AM MINDFUL OF  
03:24PM 22 GOOGLE'S ARGUMENTS ON THE OTHER SIDE, WHICH IS, OKAY, THERE'S  
03:24PM 23 NOT -- THERE'S A LOT OF DOCUMENTS HERE THAT DON'T RELATE TO THE  
03:24PM 24 KEY CASES AND THAT, YOU KNOW, THIS ISN'T AN ENTIRE -- THERE'S  
03:24PM 25 NOT AN ENTIRE IDENTITY OF ISSUES.

03:24PM 1 IT SOUNDED LIKE TO ME THAT MAYBE MEET AND CONFER HAD NOT  
03:24PM 2 GOTTEN AS FAR AS IT SHOULD HAVE. IF I TAKE GOOGLE'S  
03:24PM 3 REPRESENTATION THAT THEY HADN'T SEEN OR SEEN THE PROPOSED ORDER  
03:24PM 4 OR HAD NOT HAD A CHANCE TO DISCUSS THAT YET WITH THE PLAINTIFF,  
03:24PM 5 I THINK THAT CERTAINLY IS A GOOD PLACE, A MINIMUM, AN ABSOLUTE  
03:24PM 6 MINIMUM PLACE IS IDENTITY OF, YOU KNOW, THE SAME CUSTODIANS,  
03:24PM 7 PRODUCTION FROM THE SAME CUSTODIANS THERE SHOULD BE CROSS USE.

03:24PM 8 BEYOND THAT, I THINK THAT THE PARTIES NEED TO MEET AND  
03:25PM 9 CONFER A LITTLE FURTHER AND SEE IF YOU CAN COME TO AN  
03:25PM 10 AGREEMENT, EVERYONE MOVING OFF OF THEIR RESPECTIVE POSITIONS A  
03:25PM 11 LITTLE BIT. BUT THERE WILL BE CROSS USE. I SEE THE  
03:25PM 12 EFFICIENCIES, AND I THINK THAT THAT IS IMPORTANT IN THIS CASE,  
03:25PM 13 BUT I ALSO APPRECIATE THAT THERE ARE SOME -- YOU KNOW, THE  
03:25PM 14 CASES ARE DIFFERENT. SO I'LL TAKE UP -- I'D LIKE TO KNOW IF  
03:25PM 15 THE PARTIES HAVE MADE ANY PROGRESS ON THIS ISSUE SINCE YOU  
03:25PM 16 SUBMITTED THE CHART TO ME SINCE IT HAS BEEN A WEEK AND GOOGLE'S  
03:25PM 17 RESPONSE WAS, WELL, WE HAVE NOT SEEN THE ORDER BEFORE. NOW  
03:25PM 18 YOU'VE SEEN IT, AND I WOULD BE HOPEFUL THAT THE PARTIES HAVE  
03:25PM 19 MET AND CONFERRED IN THE INTERIM.

03:25PM 20 DID THAT OCCUR? AND I'LL HEAR FIRST FROM THE PLAINTIFF.

03:25PM 21 MR. LEE: YES, YOUR HONOR. JAMES LEE FOR THE BROWN  
03:25PM 22 PLAINTIFFS.

03:25PM 23 WE SUBMITTED THE PROPOSED ORDER ON BEHALF OF ALL THREE  
03:26PM 24 PLAINTIFF GROUPS, THAT WOULD BE BROWN, CALHOUN, AND HEWITT.

03:26PM 25 THE COURT: YES.



03:26PM 1 MR. LEE: AND THE ATTORNEYS FOR CALHOUN AND HEWITT  
03:26PM 2 MAY WANT TO BE HEARD ON THIS AS WELL, BUT RIGHT NOW I'LL SPEAK  
03:26PM 3 FOR EVERYONE.

03:26PM 4 TO ANSWER YOUR QUESTION WE OFFERED TO MEET -- WELL, LET ME  
03:26PM 5 BACK UP. THE PROPOSED ORDER WAS SUBMITTED TO GOOGLE PRIOR TO  
03:26PM 6 THE FILING OF THESE DISPUTES.

03:26PM 7 NOW, GOOGLE HAS TAKEN ISSUE BY SAYING, YOU KNOW, YOU SENT  
03:26PM 8 IT TO US AT THE LAST MINUTE, AND WE HAVEN'T HAD A CHANCE TO  
03:26PM 9 TALK ABOUT THESE ISSUES. WE HAVEN'T MET AND CONFERRED.

03:26PM 10 BUT THE PROBLEM WITH THAT, YOUR HONOR, IS THAT WE HAVE MET  
03:26PM 11 AND CONFERRED. WE'VE TALKED ABOUT ALL OF THE CONCEPTS THAT ARE  
03:26PM 12 IN OUR PROPOSED ORDER. WE JUST DIDN'T HAND THEM THE PIECE OF  
03:26PM 13 PAPER. SO NOTHING WAS A SURPRISE TO ME.

03:26PM 14 ONCE WE SUBMITTED THE --

03:26PM 15 THE COURT: OKAY. SO, MR. LEE, HAS THERE BEEN MEET  
03:26PM 16 AND CONFER SINCE THE SUBMISSION TO ME ON THE 26TH?

03:26PM 17 MR. LEE: RIGHT. SO THE PLAINTIFF HAS OFFERED MEET  
03:27PM 18 AND CONFER, AND WE REQUESTED MEET AND CONFERS, AND THEY HAVE  
03:27PM 19 NOT GOTTEN BACK TO US. WE DON'T HAVE A RESPONSE FROM THEM  
03:27PM 20 SINCE LAST WEEK WHEN WE SUBMITTED IT TO THEM.

03:27PM 21 THE COURT: OKAY. THANK YOU.

03:27PM 22 GOOGLE, CROSS USE? WHO'S GOT IT?

03:27PM 23 MS. TREBICKA: SO ACTUALLY WE DID ASK FOR A MEET AND  
03:27PM 24 CONFER TOMORROW, BUT WE HAVE NOT HEARD BACK FROM PLAINTIFFS. I  
03:27PM 25 DO HOPE THAT WE DO MEET AND CONFER BEFORE WE MAKE FURTHER

03:27PM 1 PROGRESS ON THIS OR FURTHER ORDERS FROM THE COURT ON THIS  
03:27PM 2 ISSUE.

03:27PM 3 I WOULD ALSO LIKE TO POINT OUT THAT GOOGLE ALSO PREPARED A  
03:27PM 4 PROPOSED ORDER SETTING FORTH THE APPROACH THAT IT SEES AS MOST  
03:27PM 5 REASONABLE TO CROSS USE. WE SUBMITTED IT TO YOUR HONOR. WE'VE  
03:27PM 6 SUBMITTED IT TO PLAINTIFFS AT THE SAME TIME. SO THERE ARE TWO  
03:27PM 7 COMPETING PROPOSALS AT THIS POINT.

03:27PM 8 AND IS THAT THE CUSTODIAN, THE OVERLAPPING CUSTODIAN?

03:27PM 9 MS. TREBICKA: CORRECT.

03:27PM 10 THE COURT: AS I SAID, THAT'S A MINIMUM. THAT'S A  
03:28PM 11 GOOD PLACE TO START. BUT THE PARTIES NEED TO MEET AND CONFER  
03:28PM 12 AND MAKE PROGRESS ON THIS, AND I THINK TOMORROW SOUNDS LIKE AN  
03:28PM 13 EXCELLENT TIME TO DO THAT. I KNOW HOW BUSY EVERYONE IS, BUT  
03:28PM 14 LET'S GET APPROPRIATE REPRESENTATIVES FROM ALL SIDES, ALL  
03:28PM 15 PARTIES, AND HEWITT, YOU HAVEN'T APPEARED YET, BUT YOU'RE HERE  
03:28PM 16 FOR JUST THIS REASON, AND LET'S GET THIS WORKED OUT AND GO FROM  
03:28PM 17 THERE.

03:28PM 18 MR. LEE: YOUR HONOR, MAY I MAKE A FEW BRIEF POINTS,  
03:28PM 19 YOUR HONOR? BECAUSE I DIDN'T REALIZE I WAS CEDING THE FLOOR TO  
03:28PM 20 MS. TREBICKA. PERHAPS I DID THAT TOO SOON.

03:28PM 21 THE PROBLEM, YOUR HONOR, IS THAT -- I DON'T THINK THE  
03:28PM 22 TIMING WAS AN ACCIDENT THAT THEY SENT THEIR PROPOSED ORDER  
03:28PM 23 AFTER THE FILING OF DISPUTES.

03:28PM 24 THE COURT: IT DOESN'T MATTER. WE'RE HERE TODAY,  
03:28PM 25 MR. LEE. IT DOESN'T MATTER.

03:29PM 1 MR. LEE: OKAY.

03:29PM 2 THE COURT: WE NEED TO MOVE FORWARD, AND THAT MEANS  
03:29PM 3 THAT THE PARTIES HAVE GOT TO SIT DOWN AND MAKE THIS WORK.

03:29PM 4 MR. LEE: RIGHT. SO I THINK IT WOULD BE HELPFUL IF  
03:29PM 5 WE KIND OF WALK THROUGH THE TWO COMPETING ORDERS NOW JUST TO  
03:29PM 6 GET SOME GUIDANCE FROM YOU FOR THE MEET AND CONFER TOMORROW  
03:29PM 7 BECAUSE I THINK THE TWO SIDES ARE SO FAR APART THAT I THINK  
03:29PM 8 JUST HAVING YET ANOTHER MEET AND CONFER MAY NOT BE AS FRUITFUL  
03:29PM 9 AS YOU HOPE. AND I CAN WALK THROUGH EACH PROPOSED ORDER --

03:29PM 10 THE COURT: I WOULD APPRECIATE THAT, MR. LEE, BUT  
03:29PM 11 I'M NOT GOING TO DO THAT TODAY.

03:29PM 12 MR. LEE: OKAY.

03:29PM 13 THE COURT: AND IN PART BECAUSE WE'VE BEEN GOING  
03:29PM 14 TWO HOURS, WHICH I KNOW IS A FULL HOUR SHORT OF OUR LAST  
03:29PM 15 SESSION, BUT WE NEED TO -- I WANT THE PARTIES -- MY GUIDANCE TO  
03:29PM 16 THE PARTIES IS THAT I DID READ PROPOSED ORDERS AND BOTH PARTIES  
03:30PM 17 NEED TO MOVE TOWARDS COMPROMISE AND THAT IS IN THE MIDDLE AND  
03:30PM 18 MAKE SOME ADJUSTMENTS.

03:30PM 19 I EXPECT COUNSEL IN THIS CASE TO BE ABLE TO DO THAT. AS I  
03:30PM 20 SAY, THERE WILL BE CROSS USE. I'M LOOKING FOR EFFICIENCIES,  
03:30PM 21 BUT I AM MINDFUL OF, AS I SAY, SOME OF THE DIFFERENCES IN THE  
03:30PM 22 CASE.

03:30PM 23 BUT I VIEW EACH PROPOSAL AS MERELY A STARTING PLACE. AND  
03:30PM 24 THE PARTIES HAVE WORK TO DO. SO I WANT THE PARTIES TO TAKE  
03:30PM 25 ANOTHER, ANOTHER WHACK AT IT, AND THEN I'LL GIVE YOU A TIMING

03:30PM 1 IF YOU NEED TO COME BACK TO ME, BUT WE WANT TO GET THIS SET.  
03:30PM 2 THIS IS GOING TO BE A PRETTY SHORT LEASH BECAUSE THE BENEFIT  
03:30PM 3 OF CROSS USE IS, OF COURSE, SOONER RATHER THAN LATER. ALL  
03:30PM 4 RIGHT?

03:30PM 5 MR. STRAITE: YOUR HONOR, THIS IS DAVID STRAITE FOR  
03:30PM 6 THE CALHOUN PLAINTIFFS. A QUICK QUESTION TO HELP MOVE THE  
03:30PM 7 PROCESS FORWARD TOMORROW.

03:30PM 8 TO HELP THAT CONVERSATION, COULD WE, BROWN, HEWITT, AND  
03:31PM 9 CALHOUN PLAINTIFFS, COULD WE EXCHANGE OUR CURRENT ESI CUSTODIAN  
03:31PM 10 LIST WITH EACH OTHER SO THAT WE KNOW WHAT WE'RE TALKING ABOUT  
03:31PM 11 TOMORROW?

03:31PM 12 THE COURT: EXCHANGE --

03:31PM 13 MR. STRAITE: WE DON'T KNOW WHO THE ESI CUSTODIANS  
03:31PM 14 ARE IN BROWN, AND WE DON'T KNOW WHOSE BROWN'S ARE, AND IT WOULD  
03:31PM 15 HELP THE CONVERSATION IF WE COULD SHARE THOSE LISTS IN ADVANCE  
03:31PM 16 OF TOMORROW.

03:31PM 17 THE COURT: I DON'T SEE WHY THE NAMES CAN'T BE  
03:31PM 18 SHARED.

03:31PM 19 MS. WEAVER: NO OBJECTION, YOUR HONOR.

03:31PM 20 MR. GUTKIN: THIS IS JEFF GUTKIN FROM THE COOLEY  
03:31PM 21 FIRM ON THE HEWITT MATTER. MAY I BE HEARD BRIEFLY?

03:31PM 22 THE COURT: WELCOME, MR. GIBSON.

03:31PM 23 MR. GIBSON: THANK YOU. THIS IS GOING TO BE  
03:31PM 24 DIFFICULT FOR THE COUNSEL IN THE GOOGLE MATTER TO PRODUCTIVELY  
03:31PM 25 MEET AND CONFER. WE HAVE NOT EVEN RESPONDED TO OUR FIRST SET

03:31PM 1 OF RFP'S YET WHICH WE WON'T BE DOING FOR THREE WEEKS, WE DON'T  
03:31PM 2 KNOW WHO OUR DOCUMENT CUSTODIANS WILL BE, WE'RE NOT DOING  
03:32PM 3 INITIAL DISCLOSURES FOR THREE WEEKS. SO ALL OF THIS WAS FIRST  
03:32PM 4 RAISED WITH US, HOWEVER ELSE IT WAS RAISED WITH OTHERS, LAST  
03:32PM 5 WEDNESDAY MORNING, AND IT'S VERY NEW TO US, AND WE CAN  
03:32PM 6 PARTICIPATE CONCEPTUALLY, BUT I THINK THAT THE OCCASIONS FOR  
03:32PM 7 CROSS USE IN THE HEWITT MATTER WILL BE SIGNIFICANTLY LESS AND  
03:32PM 8 VERY LITTLE OVERALL AS OPPOSED TO THE BROWN AND CALHOUN MATTERS  
03:32PM 9 WHICH MAY HAVE MORE OVERLAP OR MAY NOT.

03:32PM 10 THE COURT: AND I APPRECIATE THAT. AND IT MAY BE  
03:32PM 11 THAT HEWITT AT THIS POINT MERELY WANTS TO RESERVE ITS RIGHT TO  
03:32PM 12 BE HEARD TO BE JOINED IN OR NOT OR WANTS TO, YOU KNOW, HAVE  
03:32PM 13 SOME SEPARATE SMALL, YOU KNOW, PROVISION OR LESSER PROVISION,  
03:32PM 14 AND, FRANKLY, NEEDS MORE TIME TO DETERMINE THAT. AND THAT'S  
03:32PM 15 FINE. I DO APPRECIATE THE DIFFERENCE IN THE HEWITT PROCEDURE.

03:32PM 16 I'M DIRECTING YOU TO PARTICIPATE IN THE MEET AND CONFER  
03:32PM 17 SO, AGAIN, YOU HEAR AND SEE EVERYTHING THAT IS GOING ON SO THAT  
03:33PM 18 YOU KNOW WHAT GROUND HAS ALREADY BEEN PLOWED. ALL RIGHT. THAT  
03:33PM 19 WILL HELP YOU INFORM YOUR FUTURE DISCUSSIONS.

03:33PM 20 MR. GUTKIN: YES. THANK YOU.

03:33PM 21 MS. WEAVER: YOUR HONOR, ON BEHALF OF THE HEWITT  
03:33PM 22 PLAINTIFFS, TO END THE HEARING PERHAPS ON A HIGHER NOTE, WE HAD  
03:33PM 23 ACTUALLY ALREADY AGREED TO SOME CROSS USE WITH MR. GUTKIN, AND  
03:33PM 24 HE HAD AGREED TO ALLOW US TO USE THE TEXAS ATTORNEY GENERAL'S  
03:33PM 25 CID'S TO IDENTIFY RELEVANT DOCUMENTS IN HEWITT.

03:33PM 1 WE THINK THAT WILL BE VERY PRODUCTIVE AS AN INITIAL  
03:33PM 2 PRODUCTION IN MARCHING FORWARD ON SEARCH TERMS AND CUSTODIANS  
03:33PM 3 IN THAT WAY.

03:33PM 4 SO WE DO ACKNOWLEDGE THE DIFFERENCES IN THE CASES, BUT WE  
03:33PM 5 ALSO DO THINK THAT THERE IS SOME OVERLAP HERE THAT COULD BE  
03:33PM 6 HELPFUL, AND WE HOPE THAT WE CAN GET TO SOME FORM OF AGREEMENT  
03:33PM 7 WITH COUNSEL FOR GOOGLE IN ALL OF THE CASES.

03:33PM 8 THE COURT: GOOD. THANK YOU, MS. WEAVER. I DO  
03:33PM 9 APPRECIATE THAT. I'M ALWAYS LOOKING FOR HIGH NOTES.

03:33PM 10 ALL RIGHT. SO I HAD ISSUED A FEW RULINGS AND A HAND FULL  
03:34PM 11 OF INTERIM DEADLINES MOSTLY WITH THE EYE ON THE UPCOMING  
03:34PM 12 DEPOSITIONS. YOU HAVE THOSE IN HAND. I MAY GET OUT AN INITIAL  
03:34PM 13 ORDER REFLECTING THOSE. A NUMBER OF THESE ISSUES I WANT TO  
03:34PM 14 THINK CAREFULLY ABOUT NEXT STEPS.

03:34PM 15 AS I SAY, THERE'S PROBABLY SOME ARE SUITABLE FOR SIMPLY  
03:34PM 16 CONTINUING THIS HEARING. THESE ARE LONG, HARD -- IT'S HARD FOR  
03:34PM 17 COUNSEL, AND IT'S HARD FOR THE COURT, AND, OF COURSE, FOR THE  
03:34PM 18 COURT REPORTER. SO AGAIN, I'M CONTINUING TO MORPH THE PROCESS  
03:34PM 19 TO MAKE THIS AS EFFICIENT AS POSSIBLE.

03:34PM 20 SO I MAY GIVE YOU SOME PORTIONS ON SOME OF THE ISSUES,  
03:34PM 21 THAT IS, HEAR YOU AT A LATER DATE. I MAY ASK FOR SOME  
03:35PM 22 ADDITIONAL BRIEFING. I'M CONFIDENT ON SOME THAT I WILL JUST  
03:35PM 23 ISSUE SOME RULINGS BECAUSE SOME ARE VERY AMENABLE TO THAT.

03:35PM 24 I TRIED TO GET TO OUR IMMEDIATE MOST DIFFICULT ISSUE  
03:35PM 25 TODAY, WHICH I THINK REMAINS THE IMMEDIATE AND MOST DIFFICULT

03:35PM 1 ISSUE, BUT I LOOK FORWARD TO US ALL WORKING THROUGH THAT.

03:35PM 2 MR. STRAITE: THANK YOU, YOUR HONOR. DAVID STRAITE  
03:35PM 3 FOR THE CALHOUN PLAINTIFFS.

03:35PM 4 TWO QUICK ITEMS OF HOUSEKEEPING ISSUES BECAUSE YOUR HONOR  
03:35PM 5 TOLD US TO.

03:35PM 6 THE FIRST ORDER YOU GAVE US, AND THIS IS IN YOUR ORDER ON  
03:35PM 7 MAY 13TH YOU DIRECTED US TO DISCUSS THE DATE FOR OUR THIRD  
03:35PM 8 30(B)(6) DEPOSITION AT TODAY'S HEARING BECAUSE THE SECOND  
03:35PM 9 30(B)(6) DEPOSITION WAS PUSHED TO JUNE 11TH, CALHOUN PLAINTIFFS  
03:35PM 10 ARE PROPOSING A DATE, CONFERRING OF COURSE WITH GOOGLE,  
03:35PM 11 PROPOSING A DATE FOR THAT DEPOSITION IN OUR NEXT JOINT  
03:35PM 12 DISCUSSION RATHER THAN DISCUSSING IT TODAY.

03:35PM 13 THE COURT: I THINK THAT MAKES SENSE.

03:35PM 14 MR. STRAITE: THANK YOU, YOUR HONOR.

03:35PM 15 THE COURT: I SAW THAT IN MY NOTES, AND I THOUGHT  
03:35PM 16 MAYBE THAT'S THE JUNE 11TH DEPO AND MAYBE YOU'RE WAY AHEAD OF  
03:36PM 17 ME. NO SUCH LUCK. OKAY. FAIR ENOUGH.

03:36PM 18 MR. STRAITE: THANK YOU, YOUR HONOR.

03:36PM 19 YOU ALSO DIRECTED THE PARTIES TO DISCUSS THE POSSIBILITY  
03:36PM 20 OF USING [REDACTED] AS A TOOL TO HELP IDENTIFY RELEVANT CLASS WIDE  
03:36PM 21 DOCUMENTS TO HELP US WITH OUR CLASS WIDE IDENTIFICATION.

03:36PM 22 WE DID CONFER SEVERAL TIMES. AND GOOGLE'S TEAM IS LED BY  
03:36PM 23 JOSEF ANSORGE, WHO DID A GREAT JOB OF CONCLUDING WITH COMPLETE  
03:36PM 24 UNANIMITY THAT [REDACTED] IS NOT APPROPRIATE AS A SUBSTITUTE FOR SOME  
03:36PM 25 OF THE OTHER ISSUES, SO WE DID CONCLUDE THOSE CONVERSATIONS.

03:36PM 1 WE THINK THERE CAN BE ADDITIONAL CONVERSATIONS REGARDING  
03:36PM 2 THE USE OF THAT [REDACTED] IN SOME WAYS BUT NOT AS A COMPLETE  
03:36PM 3 SUBSTITUTE FOR SOME OF THE OTHER INQUIRIES THAT WE'RE  
03:36PM 4 UNDERTAKING. SO WE DID HAVE THAT CONVERSATION. WE WANTED TO  
03:36PM 5 REPORT BACK TO YOU AS YOU TOLD US TO.

03:36PM 6 THE COURT: I APPRECIATE THAT. THANK YOU.

03:36PM 7 OKAY. ANYTHING ELSE FROM CALHOUN FOR TODAY? I'M GOING TO  
03:36PM 8 CALL HEWITT JUST TO TOUCH BASE. I HAVE A COUPLE OF OPEN ITEMS  
03:36PM 9 FOR THEM.

03:36PM 10 DON'T WORRY, MR. SCHAPIRO, I'M COMING TO YOU.

03:37PM 11 BUT ANYTHING ELSE FOR CALHOUN ON THE PLAINTIFFS' SIDE?

03:37PM 12 MR. STRAITE: NO, YOUR HONOR. THANK YOU FOR YOUR  
03:37PM 13 TIME TODAY. WE APPRECIATE IT.

03:37PM 14 THE COURT: ALL RIGHT. MR. SCHAPIRO, DO YOU WANT TO  
03:37PM 15 BE HEARD WITH REGARDS TO CALHOUN OR DO YOU JUST WANT TO WAIT  
03:37PM 16 FOR CALHOUN AND BROWN?

03:37PM 17 MR. SCHAPIRO: IT DOESN'T MATTER, YOUR HONOR.  
03:37PM 18 ACTUALLY, ALL I WANT TO DO WAS FORESHADOW THAT -- I WANTED TO  
03:37PM 19 INVITE MS. CRAWFORD TO RAISE ONE ISSUE THAT MIGHT BE A GATING  
03:37PM 20 FACTOR OR SOMETHING THAT WE NEED CLARIFICATION ON REGARDING ONE  
03:37PM 21 OF YOUR PRIOR ORDERS ABOUT THE DOCUMENTS. IT CAN WAIT UNTIL  
03:37PM 22 THE END, I JUST WANT TO MAKE SURE WE DIDN'T SIGN OFF WITHOUT  
03:37PM 23 THAT.

03:37PM 24 THE COURT: ALL RIGHT. I'M PRETTY MUCH OUT OF TIME.  
03:37PM 25 IF IT'S REALLY AND TRULY A GATING ISSUE.



03:37PM 1 MR. SCHAPIRO: IF CAN BE 90 SECONDS I THINK.

03:37PM 2 THE COURT: ALL RIGHT. MS. CRAWFORD, NO PRESSURE.  
03:37PM 3 THAT DOESN'T MEAN TALK FASTER.

03:37PM 4 MS. CRAWFORD: THANK YOU, YOUR HONOR. I APPRECIATE  
03:37PM 5 THE OPPORTUNITY.

03:37PM 6 JUST TO CLARIFY YOUR ORDER ON P10 CONCERNING THE JUNE 18TH  
03:37PM 7 SUBSTANTIAL COMPLETION DEADLINE AND SPECIFICALLY YOUR  
03:37PM 8 APRIL 30TH ORDER.

03:38PM 9 THE COURT ORDERED THAT CERTAIN TERMS BE RUN BY GOOGLE AND  
03:38PM 10 OTHER TERMS WOULD BE SUBJECT TO A MEET AND CONFER, AND SO I  
03:38PM 11 JUST WANTED TO CLARIFY WHETHER THE SCOPE OF THE SUBSTANTIAL  
03:38PM 12 COMPLETION DEADLINE APPLIES TO JUST THOSE TERMS AND THOSE  
03:38PM 13 CUSTODIANS THAT WERE THE SUBJECT OF THE COURT'S APRIL 30TH  
03:38PM 14 ORDER AND MAYBE YOU'RE SETTING A SEPARATE DEADLINE FOR THE  
03:38PM 15 TERMS THAT THE PARTIES WERE SUBSEQUENTLY NEGOTIATING THROUGH  
03:38PM 16 THE MEET AND CONFER PROCESS.

03:38PM 17 I ALSO WANTED TO FLAG, BECAUSE I HEARD YOUR HONOR  
03:38PM 18 REFERENCE THE TEN LIMITED TERMS THAT YOU ORIGINALLY ORDERED OF  
03:38PM 19 THOSE SIX WERE AGREED UPON AND SUBJECT TO THE COURT'S  
03:38PM 20 APRIL 30TH ORDER. I BELIEVE AS YOU'VE SEEN IN OUR SUBMISSION,  
03:38PM 21 PLAINTIFFS NEED NOW TO ADD FOUR ADDITIONAL TERMS.

03:38PM 22 THE COURT: DON'T GO THERE.

03:38PM 23 MS. CRAWFORD: I JUST WANTED TO MAKE SURE THERE WAS  
03:38PM 24 A SEPARATE DEADLINE.

03:38PM 25 THE COURT: WELL, THE ISSUE -- MY APRIL 30TH ORDER

03:38PM 1 IDENTIFIED A WHOLE SERIES OF -- WELL, WHAT, IDENTIFIED 24  
03:39PM 2 ADDITIONAL SEARCHES, RIGHT?

03:39PM 3 MS. CRAWFORD: YES. WERE SUBJECT TO FURTHER MEET  
03:39PM 4 AND CONFERS AND OTHERS THAT THE COURT ALLOWED WITHOUT  
03:39PM 5 LIMITATION.

03:39PM 6 THE COURT: YES. I HAD -- YOU'RE RIGHT. THERE WERE  
03:39PM 7 ONLY THREE -- NOPE. WELL, THAT IS NOT AS COMPREHENSIVE AS I  
03:39PM 8 HAD HOPED.

03:39PM 9 OBVIOUSLY YOU HAVE THIS ORDER. I WOULD HAVE EXPECTED THIS  
03:39PM 10 MEET AND CONFER TO BE COMPLETED BY NOW ON BOTH SIDES. YOU ALL  
03:39PM 11 HAVE HAD THIS ORDER SINCE THE 30TH. HAS GOOGLE PROVIDED HIT  
03:39PM 12 COUNT OR ARE WE ANYWHERE ON THESE?

03:40PM 13 MS. CRAWFORD: THESE ISSUES ARE LARGELY RESOLVED,  
03:40PM 14 YOUR HONOR. I JUST WANTED TO KNOW BECAUSE THERE WERE  
03:40PM 15 SUBSEQUENT MEET AND CONFERS THAT TOOK PLACE AND THESE TERMS FOR  
03:40PM 16 WHICH YOU ORDERED SUBSEQUENT CONVERSATIONS AND HIT COUNTS,  
03:40PM 17 THOSE WERE NOT FINALIZED UNTIL SOME TIME SUBSEQUENT TO THE  
03:40PM 18 APRIL 30TH ORDER. SO I JUST WANTED TO KNOW IF THOSE WERE ALSO  
03:40PM 19 SUBJECT TO THE JUNE 18TH SUBSTANTIAL COMPLETION DEADLINE OR WAS  
03:40PM 20 IT A SLIGHTLY EXTENDED SCHEDULE WOULD APPLY TO THOSE  
03:40PM 21 SUBSEQUENTLY NEGOTIATED AND RESOLVED TERMS.

03:40PM 22 THE COURT: JUNE 18TH.

03:40PM 23 MS. CRAWFORD: THANK YOU, YOUR HONOR.

03:40PM 24 THE COURT: THANK YOU. THANK YOU FOR RAISING THE  
03:40PM 25 ISSUE. NOW I HAVE TO GO BACK AND READ MY ORDERS EVEN MORE

03:40PM 1  
03:40PM 2  
03:40PM 3  
03:40PM 4  
03:40PM 5  
03:41PM 6  
03:41PM 7  
03:41PM 8  
03:41PM 9  
03:41PM 10  
03:41PM 11  
03:41PM 12  
03:41PM 13  
03:41PM 14  
03:41PM 15  
03:41PM 16  
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03:41PM 18  
03:41PM 19  
03:41PM 20  
03:41PM 21  
03:41PM 22  
03:41PM 23  
03:41PM 24  
03:41PM 25

CLOSELY.

OKAY. LET'S TURN TO BROWN. I'M NOT INVITING ARGUMENT ON ANY OTHER POINTS. I'M JUST TOUCHING BASE. ARE WE ALL -- ANYTHING FURTHER FROM BROWN FOR TODAY? DO I HAVE COUNSEL FOR BROWN?

MR. LEE: YES, COUNSEL FOR BROWN ARE HERE.

THE COURT: RIGHT.

MR. LEE: RIGHT. WE HAD NOTED A COUPLE OTHER KIND OF, BUT I UNDERSTAND YOUR HONOR IS TELLING US IT'S NOT TODAY. IF THEY'RE JUST HOUSEKEEPING ISSUES, I'LL ASK MY COLLEAGUES TO WEIGH IN IF THEY HAVE ANYTHING TO ADDRESS.

THE COURT: THANK YOU, MR. LEE. I KNOW I ASKED YOU GUYS TO TAKE YOUR LISTS, WHICH I KNOW YOU WORK HARD ON AND I APPRECIATE IT, AND WHITTLE IT DOWN TO FOUR, AND THAT'S ALWAYS SO HARD TO DO THAT. THEY'RE ALL IMPORTANT, AND THAT'S WHY THEY'RE ON THE LIST. WE'RE MANAGING THE PROCESS AS BEST WE CAN, BUT I WILL, AS I SAY, EITHER TAKE FURTHER ARGUMENT, REQUEST FURTHER BRIEFING OR GIVE YOU MY RULING ON THOSE.

MR. LEE: THANK YOU, YOUR HONOR.

THE COURT: OKAY. HEARING NOTHING FURTHER IN BROWN FROM DEFENDANTS FOR BROWN.

MR. SCHAPIRO, ANYTHING?

MR. SCHAPIRO: NO, YOUR HONOR.

THE COURT: ALL RIGHT. THANK YOU. OKAY. THEN LET'S BRIEFLY CALL HEWITT, MS. FANTHORPE, IF YOU WOULD.

03:42PM 1 THE CLERK: YES. CALLING CASE 21-CV-2155, HEWITT,  
03:42PM 2 ET AL., VERSUS GOOGLE LLC.

03:42PM 3 COUNSEL, IDENTIFY YOURSELVES FOR THE RECORD BEGINNING WITH  
03:42PM 4 THE PLAINTIFF.

03:42PM 5 MS. WEAVER: GOOD AFTERNOON, YOUR HONOR.

03:42PM 6 LESLEY WEAVER FROM BLEICHMAR, FONTI & AULD AND ALSO  
03:42PM 7 ANNE DAVIS WITH MY FIRM IS WITH ME, AND MY COCOUNSEL,  
03:42PM 8 DAVID STRAITE, JAY BARNES, AND MEMBERS OF THEIR RESPECTIVE  
03:42PM 9 TEAMS INCLUDING AMY KELLER -- HELP ME, DAVID.

03:42PM 10 MR. STRAITE: SURE. OF COURSE. YOUR HONOR, OF  
03:42PM 11 COURSE AS YOU WERE INTRODUCED BEFORE, AMY KELLER IN OUR CHICAGO  
03:42PM 12 OFFICE, ALSO ADAM BROOME IN OUR CHICAGO OFFICE ARE HERE AS  
03:42PM 13 WELL.

03:42PM 14 THE COURT: ALL RIGHT. WELCOME. THANK YOU FOR YOUR  
03:42PM 15 PATIENCE. I HOPE HAVING HEWITT HERE INFORMS FUTURE DISPUTES  
03:43PM 16 AND FUTURE MEET AND CONFERS. THAT'S CERTAINLY MY INTENTION.

03:43PM 17 AND FOR GOOGLE IN THE HEWITT MATTER, PLEASE.

03:43PM 18 MR. GUTKIN: YOUR HONOR, IT'S JEFF GUTKIN AGAIN FROM  
03:43PM 19 THE COOLEY FIRM, AND I'M JOINED BY MY COLLEAGUES, DANIEL PIERRE  
03:43PM 20 AND KELSEY SPECTOR. AND MY COLLEAGUE, COLLIN SCOTT, WAS ON THE  
03:43PM 21 PHONE, AND I BELIEVE HE HAD TO DROP. SO I BELIEVE HE'S NO  
03:43PM 22 LONGER WITH US.

03:43PM 23 THE COURT: THANK YOU ALL FOR APPEARING. I DO HAVE,  
03:43PM 24 I HAVE IN MY QUEUE YOUR PROTECTIVE ORDER AS WELL AS THE  
03:43PM 25 STIPULATION REGARDING EXPERT DISCOVERY.

03:43PM 1 SO THAT'S WHAT I HAVE AS OPEN ISSUES THAT COME TO ME FROM  
03:43PM 2 JUDGE KOH, SO I WILL TURN MY ATTENTION TO THOSE.

03:43PM 3 IS THERE ANYTHING THAT YOU'RE AWARE OF THAT I'M  
03:43PM 4 OVERLOOKING? AND I'LL HEAR FIRST FROM PLAINTIFFS.

03:43PM 5 MS. WEAVER: THANK YOU, YOUR HONOR. LESLEY WEAVER.

03:43PM 6 FIRST I SHOULD NOTE THAT JAY BARNES IS HERE BUT ALSO  
03:43PM 7 AN TRUONG OF HIS FIRM WHO HAS BEEN WORKING VERY HARD ON THIS  
03:44PM 8 ISSUE AS WELL, AND WE SHOULD ACKNOWLEDGE HER CONTRIBUTION AND  
03:44PM 9 PRESENCE.

03:44PM 10 WE HAVE SUBMITTED THESE TWO ORDERS. THEY'RE SIMILAR TO  
03:44PM 11 WHAT WAS ENTERED IN CALHOUN OR WHAT WE HOPED TO ENTER WITH  
03:44PM 12 REGARD TO THE EXPERT STIPULATION IN CALHOUN.

03:44PM 13 IN THIS CASE WE ARE EARLY ENGAGED ON THE ISSUE OF THE LOG  
03:44PM 14 PRESERVATION ISSUE, AND WE'RE SEEKING A WAY TO CONSTRUCT TO  
03:44PM 15 IDENTIFY WHAT IS RESPONSIVE AND RELEVANT TO THE REAL TIME  
03:44PM 16 BIDDING AUCTION ISSUES AND HOW TO PARSE SOMETHING OUT AND  
03:44PM 17 CREATE A CONSTRUCTIVE, EFFICIENT WAY TO PRESERVE WHAT WE  
03:44PM 18 PLAINTIFFS THINK WE NEED TO PROVE THEIR CASE AND DEFENDANT WILL  
03:44PM 19 WANT TO USE TO DEFEND IT.

03:44PM 20 GETTING THAT EXPERT STIPULATION IS HELPFUL TO US BECAUSE  
03:44PM 21 WE HAVE ENGAGED EXPERTS WHO ARE DIGGING INTO THESE ISSUES  
03:44PM 22 ALREADY AT THIS STAGE. SO THAT WOULD BE HELPFUL.

03:44PM 23 I WANTED TO LET YOU KNOW THAT WE ALSO DISCUSSED THE SAME  
03:44PM 24 ESI PROTOCOL OR A SIMILAR ONE TO THE ONE ENTERED IN CALHOUN AND  
03:44PM 25 APPLIED THOSE TO THE CLAWBACK. WE HAVE A FOLLOW-UP MEET AND

03:45PM 1 CONFER SCHEDULED FOR TOMORROW.

03:45PM 2 WE DID MENTION THE JUNE 22ND DEADLINE FOR RESPONSES. WE  
03:45PM 3 WERE GRANTED EXTENSIONS TO THAT AS WELL AS OUR INITIAL  
03:45PM 4 DISCLOSURE EXCHANGE. AND WE HAVE DISCUSSED AS WELL IN LIGHT OF  
03:45PM 5 YOUR HONOR'S ORDERS IN CALHOUN AND BROWN PRESERVATION ISSUES  
03:45PM 6 BOTH FROM THE PLAINTIFFS' SIDE WITH REGARD TO DEVICES. IT MAY  
03:45PM 7 BE THE BEST PRESERVATION, AND THESE ARE SLIGHTLY DIFFERENT  
03:45PM 8 GIVEN THE SCOPE OF THE REAL TIME BIDDING CASE AND ALSO FROM  
03:45PM 9 GOOGLE'S PERSPECTIVE WHAT THEY WILL BE PRESERVING. WE SET  
03:45PM 10 THOSE OUT AND PUT FORWARD IN A CHART, BUT WE DO THINK IT'S  
03:45PM 11 REALLY HELPFUL TO HAVE THESE CROSS-COORDINATION DISCUSSIONS.

03:45PM 12 AND WE DO TEE UP -- I HOPE WE CAN RESOLVE WITHOUT IMPASSE  
03:45PM 13 THE ESI PROTOCOL AND 502(D). WE WILL ALSO BE SEEKING TO GET  
03:45PM 14 THOSE EARLY PRODUCTIONS OF THE TEXAS ATTORNEY GENERAL DOCUMENTS  
03:45PM 15 THAT YOU'VE IDENTIFIED FOR REVIEWING THE CID'S, AND WE WILL BE  
03:46PM 16 CONFERRING WITH COUNSEL FOR GOOGLE ABOUT THAT AS WELL.

03:46PM 17 THE COURT: ALL RIGHT. EXCELLENT. IT SOUNDS LIKE  
03:46PM 18 YOU'RE OFF TO THE RIGHT START WHICH IS IDENTIFYING ISSUES AND  
03:46PM 19 MEETING AND CONFERRING.

03:46PM 20 MR. GUTKIN.

03:46PM 21 MR. GUTKIN: ONE THING I WOULD AT, YOUR HONOR, JUST  
03:46PM 22 TO MAKE SURE THAT YOU ARE AWARE OF, ALTHOUGH I'M SURE THAT YOU  
03:46PM 23 ARE, IS THAT THERE ARE OTHER CASES THAT BOTH GOOGLE AND THE  
03:46PM 24 CALHOUN PARTIES BELIEVE THAT SHOULD BE NOT JUST RELATED BUT  
03:46PM 25 CONSOLIDATED WITH THE HEWITT MATTER.

03:46PM 1 THIS MOTION PRACTICE IS BEFORE JUDGE KOH, BUT THERE IS  
03:46PM 2 GOING TO BE, AS I UNDERSTAND IT, THERE'S GOING TO BE A 23(G)  
03:46PM 3 MOTION RELATED TO -- AND ACTUALLY MS. WEAVER AND HER TEAM FILED  
03:46PM 4 SOMETHING LAST NIGHT THAT MAKES ME NOW UNDERSTAND THAT THESE  
03:46PM 5 OTHER CASES, THEY'RE THE DELAHUNTY AND TORONTO MATTERS, THAT  
03:46PM 6 COUNSEL FOR THOSE MATTERS WHO ARE NOT PRESENT BEFORE YOU TODAY  
03:46PM 7 ALSO SUPPORT CONSOLIDATION.

03:47PM 8 MY UNDERSTANDING IS THAT THERE'S GOING TO BE A 23(G)  
03:47PM 9 PROCESS TO DETERMINE LEAD COUNSEL ON THE CONSOLIDATED MATTERS.  
03:47PM 10 I DON'T -- I THINK THERE'S A DISAGREEMENT AMONG THE VARIOUS  
03:47PM 11 PLAINTIFFS' COUNSEL GROUPS AS TO THE TIMING OF THAT PROCESS,  
03:47PM 12 BUT THAT THAT PROCESS WILL OCCUR.

03:47PM 13 SO IT'S NOT YET AN ELEPHANT IN THE ROOM, BUT THAT IS  
03:47PM 14 CERTAINLY SOMETHING TO BE AWARE OF THAT IS PROBABLY BY THE TIME  
03:47PM 15 OF OUR NEXT APPEARANCE BEFORE YOU THAT WILL BE IN PROCESS OR IT  
03:47PM 16 WILL BE BEFORE JUDGE KOH TO A CERTAIN EXTENT IF NOT FULLY  
03:47PM 17 BRIEFED.

03:47PM 18 SO I JUST WANTED TO RAISE THAT WITH YOUR HONOR.

03:47PM 19 THE COURT: THANK YOU. I APPRECIATE THAT. IF THE  
03:47PM 20 ELEPHANT IS NOT IN THE ROOM IT'S CERTAINLY DOWN THE HALL.

03:47PM 21 ALL RIGHT. THANK YOU. I'M NOT GOING TO SET OUR NEXT  
03:47PM 22 SESSION YET ONLY BECAUSE I WANT TO WORK THROUGH A FEW OF THESE  
03:48PM 23 INTERIM ISSUES, BUT I KNOW IT'S IMPORTANT TO GET IT ON THE  
03:48PM 24 CALENDAR SO YOU ALL CAN GET IT ON YOUR CALENDARS SO WE CAN ALL  
03:48PM 25 GATHER. SO YOU WILL HEAR FROM ME SHORTLY. OKAY.

03:48PM 1 ALL RIGHT. THANK YOU ALL VERY MUCH FOR YOUR TIME AND  
03:48PM 2 ATTENTION AND IMPORTANTLY PREPARATION FOR TODAY, AND WE WILL  
03:48PM 3 KEEP MOVING FORWARD.

03:48PM 4 THANK YOU. AND THAT CONCLUDES THESE MATTERS. WE ARE  
03:48PM 5 ADJOURNED.

03:48PM 6 MR. LEE: THANK YOU, YOUR HONOR.

03:48PM 7 MR. SCHAPIRO: THANK YOU, YOUR HONOR.

03:48PM 8 MS. WEAVER: THANK YOU.

03:48PM 9 (COURT CONCLUDED AT 3:48 P.M.)

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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

A handwritten signature in black ink that reads "Irene Rodriguez". The signature is written in a cursive, flowing style with a large, decorative flourish at the end of the last name.

IRENE RODRIGUEZ, CSR, RMR, CRR  
CERTIFICATE NUMBER 8074

DATED: JUNE 2, 2021